

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

76-1448

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

-----x
UNITED STATES OF AMERICA,
Appellee,

-v-

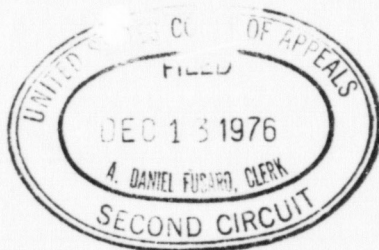
SUSAN BRAUNIG,
Appellant.
-----x

ocket No.
76-1448

Pls

APPENDIX TO BRIEF FOR
APPELLANT SUSAN BRAUNIG

Appeal from A Judgment of
Conviction in The United
States District Court For
The Southern District of
New York



Howard L. Jacobs, Esq.
Donald E. Nawi, Esq.,

Of Counsel

Howard L. Jacobs, P.C.
401 Broadway
New York, New York 10013

PAGINATION AS IN ORIGINAL COPY

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U.S. DISTRICT COURT - CRIMINAL DOCKET

Felony ☒ **JUDGE/**
 Offense ☐ **MAGISTRATE**
 minor ☐ **0208/1**
 District Office

Assigned Trial **0851**
 Disposition **1**
 U.S. vs. **BRAUNIG, SUSAN M., a/k/a**
Mrs. Susan M. Gardner, a/k/a S.M. Gardner
 defendant

Case Filed
 Day Mo. Yr. **09 01 76**
 Docket No. **0021**
 Def. **02**
 No. of **03**
 Defendants **Al**

U.S. CODE SECTION

18-2314
18:1341
18:1343

OFFENSES
Transp. of stolen securities.
Mail fraud.
Wire fraud.

COUNTS

1&10
2,5-7
3,4,8
9,11&13
13
15&16

18:1342
18:1623

Use of fictitious name.
False declarations bef. G.J.

U.S. Attorney or Asst.

Jed S. Rakoff
(212) 791-0011

Defense: ☐ CJA, ☒ Ret; ☐ Waived, ☐ Self, ☐ None ☐ Other, ☐ PD, ☐ CD

William S. Ellis
51 East 42nd Street, NYC

Tel. 794 1245

MAGR. CASE NO.

☐ BAIL * RELEASE
☐ Personal Recog.
☐ Unsecured Bond
☐ Conditional Release
 Set (000) ☐ 10% Deposit
 \$ ☐ Surety Bond
 date ☐ Collateral
☐ Bail Not
☐ 3rd Party
☐ Custody
☐ Changed
☐ PSA
 (See Docket)

EYS

LS

ARREST

03-12-76 or
 U.S. Custody
 Began on Above
 Charges

INDICTMENT

Information ☐
 High Risk
 Defn. &
 Date Design'd ☐
 Waived ☐
 Superseding
☒ Indict/Info ☐
1-9-76

ARRAIGNMENT

Trial Set For
4-26-76
 1st Plea ☒ Not Guilty
☐ Nolo
☐ Guilty
 Final Plea ☐ Not Guilty
☐ Nolo
☐ Guilty

TRIAL

Voir Dire ☐
 Trial Began ☐
 Trial Ended ☐

SENTENCE

Disposition
☐ Convicted ☐ On All Charges
☐ Acquitted ☐ On Lesser
 Offense(s)
☐ Dismissed: ☐ WOP: ☐ WP*
☐ Nolo/Discontinued*

☐ Prosecution Deferred

ATE

Search Warrant	Issued	DATE	INITIAL/No.	INITIAL APPEARANCE	INITIAL/No.	OUTCOME
Summons	Issued			PRELIMINARY EXAMINATION OR REMOVAL HEARING		<input type="checkbox"/> Dismissed <input type="checkbox"/> Held for District GJ <input type="checkbox"/> Held to Answer to U. S. District Court BOND <input type="checkbox"/> Exonerated <input type="checkbox"/> To Transfer District AT: _____ Magistrate's Initials
Arrest Warrant	Served			<input type="checkbox"/> Waived <input type="checkbox"/> Not Waived <input type="checkbox"/> Intervening Indictment		
COMPLAINT				Tape No. _____	INITIAL/No. _____	
OFFENSE (In Complaint)						

Show last names and suffix numbers of other defendants on same indictment/information
Gardner-1; Guthrie-3.

V. Excludable Delay

(a) (b) (c) (d)

DATE PROCEEDINGS

1-9-76 Filed indictment. Referred to Judge Pierce as superseding indictment 75 Cr 741.

1-19-76 Filed Gov'ts. Response to motion of co-dft. Braunig respecting visits to dft. Gardner.

1-21-76 Filed Gov'ts. Bill of Particulars.

1-22-75 BRAUNIG (Atty Wm. Ellis) dft. plead not guilty to 2nd superseding information/ Court Exh 1 ordered Sealed by the Court. Same bail conditions cont'd as to dft. Trial 4-26-76 at 9:00. Pierce J.

1-22-76 Filed Sealed Envelope - Court Exhibit 1 Ordered sealed by Court. (Place in the Cashier Vault)

1-27-76 Filed the following papers rec'd from Magistrate Alsop of the U.S. District Court, Salt Lake City Utah with a letter dtd. 1-19-76.
 Re: Witness Assen Ivanoff As Material Witness)
 Bail Reform Act Form No. 2
 Appearance Bond in the Sum of \$50,000 by Assen Ivanoff from the District of Utah
 Docket Sheet Entry - Central District of Utah (Mag. #A-76 7M)

(Continued)

OPPOSITE THE APPLICABLE DOCKET ENTRIES IN SECTION IV SHOW, IN SECTION V, ANY OCCURRENCE OF EXCLUDABLE

BEST COPY AVAILABLE

DATE	IV. PROCEEDINGS (continued)	V. EXCLUDABLE DELAY			
		(a)	(b)	(c)	(d)
1-27-76	ALL DEFTS. - Filed Order Specifying Methods & Conditions of Release of Assen D. Ivanoff, A Material Witness. Ordered that Assen D. Ivanoff, appear on 4-26-76 in Room 1106 at 9:30 a.m. in order to secure said appearance the material witness Assen D. Ivanoff be detained & committed to the custody of the U.S. Marshal for SDNY unless by no later than the close of business on 2-13-76 he comply with & satisfy each & every one of the special conditions; & he execute before a Judge, Magistrate, etc. a PRB in the sum of \$100,000 Etc. & that he deposit with the Clerk as further security for said bond the sum of \$1,000 cash, \$500 of which may be taken from the \$500 previously deposited by said Assen D. Ivanoff with the US Dist. Court for the Dist. of Utah & transferred by said court to the Clerk of the aforementioned special conditions, etc. forthwith return him his passport. Pierce J. (mailed notice)				
1-27-76	Filed Appearance Bond for Assen D. Ivanoff(material witness) in the Sum of \$1,000.00 Cash. Receipt #64842 (\$500.00) as security - Transf. from Dist. of Utah (\$500.00)				
2-6-76	Filed Defts. Affidavit and notice of motion for Supplementary Bill of Particulars.				
2-6-76	Filed Defts. affidavit and notice of motion for an order severing Cts. 15 & 16 .				
2-9-76	Filed Gov'ts. affidavit and notice of motion for an order pur. to Rule 16(b) FRCP requiring each dft. to permit the Gov't to inspect & copy, etc & furnish handwriting exemplars.				
2-17-76	One Sealed Envelope - Court Exhibit #2 Ordered Sealed by Order of the Court.				
2-17-76	Filed Warrant to Apprehend Material Witness Assen Ivanoff with marshals return executed on 1-14-76.				
2-17-76	Filed Order that the Court directs that the letter marked as E Court's Exhibit 2 & made a part of Record be sealed. Pierce J. (mailed notice)				
2-23-76	Filed Defts. affdvt. in opposition to gov'ts motion for more handwriting specimens & permitting gov't to inspect & copy any & all books, etc. in possession of deft.				
3-3-76	Filed Order that Gov't has moved for an order requiring dfts. M.S. Gardner & S.M. Braunig to furnish handwriting exemplars. In the absence of such a showing as indicated, the Gov'ts. request for further handwriting exemplars is denied.....Pierce J. (mailed notice)				
3-3-76	Filed Transcript of proceeding dtd. 1-22-76.				
3-3-76	Filed Transcript of proceeding dtd. 1-26-76.				
3-17-76	Filed Dfts. Affidvt. & Notice of Motion for an order Suppressing her Grand Jury testimony & dismissing Cts. 15 & 16 of the indictment against her.				
3-17-76	Filed Dfts. Affidvt & Notice of Motion for an order pur to 18:3006A(e)(1)(2)(3) for appointment of a qualified handwriting expert to assist her in her own defense properly.				
(Over)		(a)	(b)	(c)	(d)
		Interval (per Section II)	Start Date End Date	Ltr. Code	Total Days

DATE	PROCEEDINGS
	Page #3 JUDGE PIERCE
3-17-76	Filed One Sealed Envelope - enclosed sealed affidavit. It shall not be opened without an order of the undersigned or another judge of this Court. Place in the Vault.....Pierce J.
03-31-76	Bench Warrant Ordered as to Dft. Susan Braunig- See Affidavit of AUSA Rakoff dtd. March 30, 1976.....Pierce J.
03-31-76	Filed Gov'ts. Affidavit in support of Gov'ts. application for a bench warrant for deft. Braunig.
03-31-76	Bench Warrant Issued.
03-31-76	Filed Gov'ts Memorandum in opposition to motions to suppress Grand Jury Testimony & to other recent submissions by the dfts.
03-31-76	Filed Gov'ts Memorandum in opposition to dfts. Latest Pre Trial motions.
03-31-76	Filed Gov'ts. Memorandum of Law.
04-15-76	Writ Issued (James E. Lofland) Ret. 4/26/76.
04-15-76	Filed Order that the Gov't is directed to take all steps necessary to have James Lofland produced for trial of this action by 4/21/76, if feasible, but in no event later than 4/26/76.....Pierce J. (mailed notice)
04-20-76	Filed Memo. End. on motion dtd. 3-17-76. Motion for appointment of a handwriting expert to assist the dft. Braunig in her defense is denied without prejudice to renewal at such time as shall be brought to trial on the charges contained in the instant indictment.....Pierce J. (mailed notice)
04-20-76	Filed Memo. End. on motion dtd. 2-6-76. The instant motion is denied insofar as it seeks particulars of Count 13. The motion is consented to with respect to Counts 5 & 6 of the present indictment & is granted to that extent.....Pierce J. (mailed notice)
04-20-76	Filed Memo. End. on motion dtd. 2-6-76. The motion to sever is denied....Pierce J. (mailed notice)
04-21-76	Filed Gov'ts request to charge.
04-21-76	Filed Dfts. Supplemental affdvt. in support of motion made 3/1/76 to suppress Grand Jury testimony of dfts. Guthrie & to dismiss ct. 14.
04-22-76	Filed Opinion #44283. In accordance with the conditions & specifications set forth in this opinion, the dft. Gardner's motion to be permitted to take the deposition of Braunig is hereby is granted.....Pierce J. (mailed notice)
04-23-76	Filed Opinion #44293. Motion to sever Ct. 12 as to dft. Guthrie is granted. Decision is reserved at this time as to dft. Guthrie motion to dismiss Ct. 14 as indicated. Guthrie's motion to strike introduction to Cts. 1 through 13 & to sever trial as indicated, are denied, as indicated. Decision is reserved to preclude to gov't from impeaching his creditility as indicated.....Pierce J. (mailed notice)
	(CONTINUED)

DATE	PROCEEDINGS
04-28-76	Filed Gov'ts Memorandum of Law in support of its offer of Proof of Similar Acts & False Exculpatory Statements.
04-28-76	Filed Gov'ts Memorandum in support of an offer of Proof concerning the testimony of L. Ross Allen.
04-28-76	Filed Gov'ts. Appendix of Exhibits concerning the similar Acts outlined in its memorandum of law.
04-28-76	Filed Gov'ts Proposed Examination of Prospective Jurors.
5-13-76	Filed Gov't responding affidavit to affidavit of Daniel J. Steinbock dtd. 4/20/76 in support of Guthrie's motion to suppress his Grand Jury testimony & dismiss 14 of the present indictment.
5-13-76	Filed Memo. End. on motion dtd. 3/17/76. Motion to suppress Braunig's grand jury testimony & to dismiss Counts 15 & 16 of the indictment is denied....Pierce J. (mailed notice)
5-21-76	Filed Gov'ts Supplementary request to charge.
4-19-76	Pre Trial Conference held...Pierce
4-20-76	Trial begun with a jury. Ct. 14 is severed. Dft. Braunig is severed on motion of her atty. Wm. Ellis.
7-14-76	Dft. Braunig Present with her Atty. William Ellis) - B/W vacated- Bail set for \$50,000 cash or surety - Further PTC - 8/12/76 at 4:30 - Remanded in lieu of bail.....Pierce J.
7-21-76	Issued Remand.
7-2-76	Filed transcript of record of proceedings, dated 4-19-76
7-2-76	Filed transcript of record of proceedings, dated 4-26, 27, 28, 29, 30 & 5-3-76.
7-2-76	Filed transcript of record of proceedings, dated 5-4, 5, 6, 7, 10-76
7-2-76	Filed transcript of record of proceedings, dated 5-11-12, 13, 14, 17-76
7-2-76	Filed transcript of record of proceedings, dated 5-18-19-20-21-24-25-26-76

DATE	PROCEEDINGS Page #5
8-10-76	Filed Dfts. Notice of Motion to Suppress. Ret. 8-14-76.
8-3-76	Filed Transcript of proceeding dtd. 7/7/76.
8-12-76	Conference Held - Dft. Braunig present with her atty. - Trial begins 9/7/76....Pierce J.
8-17-76	Filed Dfts. Supplementary Affidvt in support of motion to suppress.
8-17-76	Filed Dfts. Memorandum of Law in support of motion to suppress.
8-18-76	Filed Gov'ts Memorandum of Law in opposition to dft. motion to suppress certain evidence obtained from Apt. 10A, 530 E. 72nd St., NYC.
8-17-76	Filed Warrant of Arrest executed on 7/9/76.
8-19-76	Filed Order that authorities at Metropolitan Correctional Facility are directed to take all reasonable steps to permit Mr. William Ellis, counsel for dft, Susan Braunig, & Michael Gardner to meet jointly for interviews & other matters as indicated....Pierce J. (um)
8-27-76	Filed Memo. End. on letter dtd. 8/15/76 from Dft. Petition to relieve counsel for dft. Granted as indicated. Trial is adjourned from 9/7/76 to 9/13/76 in Courtroom 619. Govt. directed to prepare an index of all its exhibits, as well as a copy of all exhibits as indicated. All request to charge & voir dire requests, shall be submitted in duplicated not later than 9/9/76 at close of business.....Pierce J. (um)
8-23-76	Conference held - dft. Braunig present with atty Wm. Ellis. Dft. Braunig moves to have Mr. Ellis relieved as her counsel & have new counsel. appointed. motion granted....Pierce J.
8-26-76	Conference held - Dft. Braunig present Atty. Wm. Ellis is relieved as counsel & Joseph Stone Esq. is appointed as counsel for dft. purs. to C.J.A. Trial date is adjourned from Sept. 7th to Sept. 13 @ 9:30 - Dft. Cont'd Remanded in lieu of bail.....Pierce J.
8-31-76	Filed Order that authorities at MCC, NY are directed to take all reasonable steps to permit Mr. Joseph Stone, counsel for dft. Susan Braunig, & Michael Gardner to meet jointly as indicated.....Pierce J. (um)
9-7-76	Dft. Braunig present with atty. Harold Jacobs present - conference held - Bail reduction application held - motion denied....Pierce J.
9-9-76	Filed Order. Dfts. Motion to suppress filed 8/10/76 Denied. Opinion to follow.Pierce J. (um)
9-9-76	Filed Memo. End. on Mailgram dtd. 8/31/76, for order assigning new counsel, or allowing dft. to proceed in pro se as indicated. Ordered Joseph I Stone, is relieved as counsel for dft., & the authorities at MCC, NY are directed to take all reasonable steps to permit Mr. Howard Jacobs, counsel for dft. to meet with the dft. & with Mr. Michael Gardner jointly, for interviews & other matters as indicated. & a further conference with respect to outstanding motion to suppress Etc. & set for 9/7/76 at 4:45 pm in room 619. & the attached petition dtd. 8/31/76 & all other attached correspondence be docketed & filed....Pierce J. (um)

DATE	PROCEEDINGS	Page #6
	Judge Pierce	
9-9-76	Filed Mailgram & letters from dft. dtd. 8/31/76, 8/29/76, 8/27/76, 8/15/76, for counsel to be relieved & also attached are letters from U.S. Atty. Office dtd. 8/24/76 to Judge Pierce to relieve counsel for dft. & Telegrams to Judge Pierce dtd. 8/27/76 from dft. to relieve counsel, & letter from Law Clerk to Judge Pierce dtd. 8/27/76 to Joseph I. Stone - Eugene Neal Kaplan, Esq. Asst. U.S. Atty. Enclosing the correspondence received from Dft.	
9-15-76	Filed Opinion #45093 - The Court Concludes that under the governing principles, the search & seizure was in all respects lawful. Dfts. motion is therefore denied...Pierce J. (mn)	
9-21-76	Filed CJA 20 Copy 2 - Appointing Joseph I. Stone, 277 Bway, NYC 10007-732-2270, as counsel for Dft. dtd. 9/13/76.....Pierce J.	
9-21-76	Filed CJA 20 Copy 5 - Approving payment to Joseph I. Stone, 277 Bway NYC 10007-732-2270 - as dfts. counsel.....dtd. 9/13/76.....Pierce J.	
9-21-76	Filed CJA 20 Copy 2 - Appointing William Ellis, 51 E. 42nd St., NYC 10017 - 867 0180 as dfts. counsel.....dtd. 8/31/76.....Pierce J.	
9-23-76	Filed Sealed Envelope with Order. This Envelope & the matter within is Ordered Sealed & filed as part of the record in this action & the envelope shall not be unsealed except by order of the undersigned or of another judge of this court.....Pierce J. (mn) (Placed in the Cashier's vault on 9-27-76)	
9-13-76	Jury Trial begun as to dft. Braunig only. Counts 1 thru 4, 9 thru 12 & count 16 are severed on motion of Gov.....Pierce J.	
9-14-76	Trial Cont'd	
9-15-76	Trial Cont'd	
9-17-76	Trial Cont'd	
9-20-76	Trial Cont'd	
9-21-76	Trial Cont'd	
9-22-76	Trial Cont'd - Court charges jury.	
9-23-76	Trial Cont'd	
9-24-76	Trial Cont'd - Jury returns with a partial verdict - dft. guilty on Counts 13 & 15.	
9-27-76	Trial Cont'd - Jury finds dfts. Guilty on counts 5 & 6 & not guilty on 7 and 8. Sentence Oct 26, 1976 - at 4:30 - P.S.I Ordered - Dft. Remanded in lieu of bail dft. R.O.R. as to severed counts only.....Pierce J.	
10-8-76	Filed Dfts. Supplementary Affidvt in support of motion to suppress.	
10-8-76	Filed Dfts. Notice of Motion to Suppress. Ret. 8-14-76.	
10-8-76	Filed Gov'ts Memorandum of Law in opposition to dft's Susan Braunig's Motion to suppress certain evidence obtained from Apt. 10A 530 East 72nd St., NY	
10-8-76	Filed Dfts. Memorandum of Law in support of motion to suppress.	
10-26-76	Filed Judgment & Commitment (Atty. Howard Jacobs Present) The Dft. is hereby committed to the custody of the Atty. Gen. or his authorized representative for imprisonment for a period of TWO(2) YEARS on each of counts 5, 6, 13 & 15 to run concurrently with each other to run concurrently with each other. Dft. is to receive credit for time served in Federal custody only, which began July 5, 1976 to present day. Dft. is Remanded. Counts 1 thru 4, 9 thru 12 & count 16 are dismissed on motion of dfts. counsel with the consent of Gov't.....Pierce J.	
	Issued Commitment 11-1-76.	
11-1-76	Filed Dfts. Notice of Appeal from Judgment Ent. 10-26-76. (mn)	

(Cont'd)

M-548

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x

UNITED STATES OF AMERICA :

-v- :

INDICTMENT

MICHAEL S. GARDNER (also known as S. Michael Gardner and as S.M. Gardner), :

76 Cr. 21 (LWP)
(superseding
75 Cr. 741)

SUSAN M. BRAUNIG (also known as Mrs. Susan M. Gardner and as S.M. Gardner), :
and :

SY YOAKUM GUTHRIE III,

Defendants. :

----- x

COUNTS ONE THROUGH THIRTEEN

INTRODUCTION

The Grand Jury charges:

From in and around December, 1973 up to and including the date of the filing of this Indictment, in the Southern District of New York and elsewhere, MICHAEL S. GARDNER (also known as S. Michael Gardner and as S.M. Gardner, and hereinafter called "GARDNER") and SUSAN M. BRAUNIG (also known as Mrs. Susan M. Gardner and as S.M. Gardner, and hereinafter called "BRAUNIG"), defendants, together with SY YOAKUM GUTHRIE III (hereinafter called "GUTHRIE"), defendant in Counts 3 and 4 of this Indictment, and also together with others known and unknown to the Grand Jury (hereinafter called "confederates"), unlawfully, wilfully and knowingly did devise and intend to devise schemes and artifices to defraud and to obtain money and property from victims such as Barclay's Bank of New York (Counts 1 and 2), Fun

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Tyme Packages Inc. (Counts 3 and 4), and retail stores, banks, and other commercial enterprises (Count 5) by means of false and fraudulent pretenses, representations and promises in the form of "advance fee" schemes and related schemes also involving false and fictitious names and titles and false, forged and spurious checks, instruments, and obligations.

(A) It was part and pattern of the advance fee schemes and artifices to defraud that:

GUTHRIE and other confederates would bring victims, in the form of persons and businesses in need of rapid and substantial financial assistance, to GARDNER, who would be introduced as an international financial consultant having ready access to large-scale financing from major foreign and domestic sources. GARDNER, purporting to act as the "agent" of undisclosed principals or in the name of companies such as Ekalb Investments Inc. and Penguin Products Company (which were actually mere shells), would promise to obtain rapidly for the victims major loans, letters of credit, permanent refinancing, or other forms of financial assistance from, through, or by means of major insurance companies, Swiss banks, Canadian, German and Panamanian corporations, European exchanges, and such entities. In return for such financial assistance, which the defendants and their confederates repeatedly assured the victims

would be immediately forthcoming, the victims were required to make certain payments, of which thousands of dollars were required to be paid in advance. These advance fees, ranging from \$5,000 to \$25,000 and more, were required to be paid to GARDNER in the form of certified checks or other readily negotiable instruments.

GARDNER, BRAUNIG, GUTHRIE and their confederates had no honest expectation that the promised financial assistance would or could be obtained and had neither the capacity nor the intention to obtain it. Rather, the advance fees were immediately cashed or deposited into various personal bank accounts, including accounts opened by BRAUNIG falsely posing as GARDNER's wife, and the proceeds were then immediately spent on primarily personal uses, including payments secretly funneled by GARDNER to the benefit of GUTHRIE and other confederates as their shares of the proceeds of the fraudulent schemes.

Thereafter, GARDNER, BRAUNIG, GUTHRIE, and their confederates, having spent the advance fees, put off the demands of the victims by avoiding meeting or talking with them whenever possible, by claiming that there had been unavoidable or unforeseeable delays or that further monies were needed to meet unforeseen expenses, and by employing

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other such ruses to cover their fraud. In the end, GARDNER, BRAUNIG, GUTHRIE, and their confederates never delivered any of the promised financial assistance and never returned any of the advance fees, but claimed instead that the deals had broken down because of some non-compliance, misrepresentation or failing on the part of the victims or of third parties that also precluded any repayment of the advance fees.

As GARDNER, BRAUNIG, GUTHRIE and their confederates well knew, their aforesaid pretenses, representations, and promises were false and fraudulent confidence schemes intentionally designed to defraud the victims of their advance fees and to conceal the fraud.

(B) It was part and pattern of the related schemes and artifices to defraud involving false, forged and spurious checks, instruments and obligations that:

GARDNER and BRAUNIG, with the aid of their confederates, would open accounts in both individual and corporate names (such as the fictitious name S.M. Gardner and the fraudulent enterprise Ekalb Investments, Inc.) at the Metropolitan Trust Company in Canada and the Barclay's Bank of New York, and would acquire blank checks, instruments, and obligations (collectively referred to as "instruments") of said

M-548

institutions and gain access to their services and facilities, which they would use for the commission of frauds upon said institutions.

Among other frauds, GARDNER would falsely and fraudulently complete the front sides of instruments of the Metropolitan Trust Company, using false, fictitious, forged and spurious account numbers, account names, and signatures, and making said instruments payable to the defendant BRAUNIG, who would then endorse these instruments on their backs and deposit them into an account in her own name at Barclay's Bank of New York. Thereafter, BRAUNIG, taking advantage of the extended delay foreseeable in the use of the international mails by Barclay's Bank and its agents in the clearing and collection of these instruments, would fraudulently urge Barclay's Bank to credit her account with the face amounts of said instruments and would withdraw these amounts from her account prior to the time that Barclay's Bank learned that these instruments were false and spurious.

(C) It was part and pattern of the related schemes and artifices to defraud involving false and fictitious names and titles that:

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MICHAEL S. GARDNER having assumed the name of "S. Michael Gardner," SUSAN M. BRAUNIG would falsely and fraudulently assume the name of "Susan M. Gardner", and both would fraudulently assume the name of "S.M. Gardner." Further, GARDNER would falsely pose as an international financial consultant having ready access to large-scale financing, and BRAUNIG would falsely and fraudulently pose as GARDNER's wife, secretary, administrative assistant, business partner, and the like, as the occasion demanded, and would assume falsely and fraudulently such titles as "Mrs.", "Office Manager," "Administrative Assistant to President," and the like. By the use and with the aid of these assumed names and titles and the illusion of substance and respectability thereby created, GARDNER and BRAUNIG not only conducted, promoted, and carried on the advance fees schemes and false instrument schemes hereinabove described but also fraudulently arranged for the extension of credit from retail stores, banks, and other commercial enterprises, for the purpose of defrauding them and of conducting other unlawful business.

COUNTS FIVE AND SIX

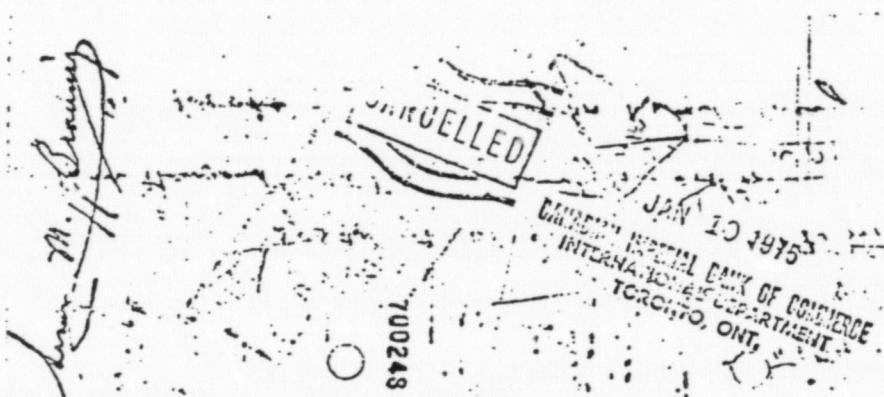
The Grand Jury further charges:

In and around December, 1974, in the Southern District of New York and elsewhere, defendants GARDNER and BRAUNIG, together with other confederates, unlawfully, willfully, knowingly, and for the purpose of executing and attempting to execute the schemes and artifices set forth in the INTRODUCTION to this Indictment, in particular, the defrauding of Barclay's Bank of New York by means of false, forged and spurious checks, instruments and obligations, did cause certain matter to be placed in post offices and authorized depositories for mail matter, to be sent and delivered by the Postal Service and to be delivered according to the directions thereon, in violation of Title 18, United States Code, Sections 1341 and 2, to wit, they did cause Barclay's Bank of New York and its agents to send through the mail for clearance and collection the two fraudulent instruments of the tenor set forth on the following page of this Indictment, which mailings are respectively Count One and Count Two of this Indictment.

(Title 18, United States Code, Sections 1341 and 2.)

Indictment
A 15

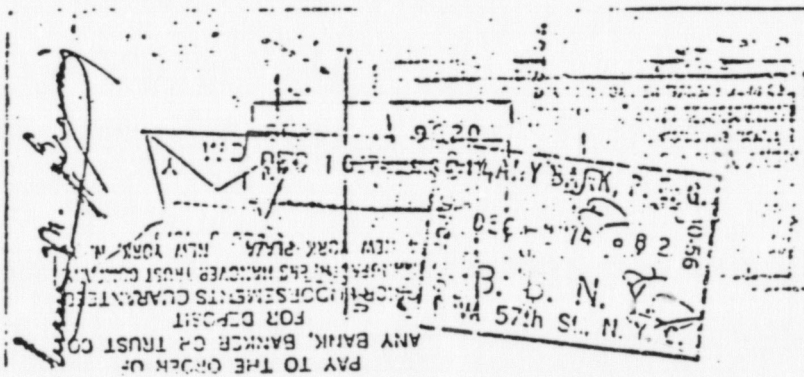
account no. 2154
date DEC 3 1974
NEW YORK 4875
pay to the order of SUSAN M. BRAUNIG
From Four Hundred Eight Hundred Seventy Five and 00/100 dollars
The Metropolitan Trust Company
353 Bay Street, Toronto 1, Ontario
U.S. FUNDS
John Robert Briny
⑆00002⑆0002⑆00003⑆96⑆
⑆0000487500⑆



(Title 18, United States Code, Sections 1341 and 2.)

[COUNT TWO]

U.S. Funds account no. C1420
date Dec 4, 1974
pay to the order of Susan M. Braunig \$ 4931.09
Fourty nine hundred thirty one and 09/100
The Metropolitan Trust Company
4881 Van Horne Avenue
Van Horne Shopping Centre
Montreal 252, Que.
⑆90001⑆0002⑆00002⑆99⑆
⑆0000493109⑆



BEST COPY AVAILABLE

(Title 18, United States Code, Sections 1341 and 2.)

COUNTS SEVEN AND EIGHT

The Grand Jury further charges:

On or about the dates set forth below, in the Southern District of New York and elsewhere, defendants GARDNER, BRAUNIG and GUTHRIE, together with other confederates, unlawfully, wilfully, knowingly and for the purpose of executing and attempting to execute the schemes and artifices set forth in the INTRODUCTION to this Indictment, in particular the advance fee scheme relating to Fun Tyme Packages Inc., did (a) cause certain matter to be placed in post offices and authorized depositories for mail matter, to be sent and delivered by the Postal Service and to be delivered according to the directions thereon, in violation of Title 18, United States Code, Sections 1341 and 2; and (b) cause to be transmitted by means of wire and radio communication in interstate and foreign commerce certain writings, signs, signals, pictures and sounds, in violation of Title 18, United States Code, Sections 1343 and 2; all as more particularly set forth below:

<u>COUNT</u>	<u>APPROXIMATE DATE</u>	<u>MATTER IN MAIL OR COMMERCE</u>	<u>TITLE 18, UNITED STATES CODE, SECTIONS</u>
3	January 29, 1975	Letter from GARDNER addressed to Mr. Mark B. Parker, Attorney at Law, P.O. Box 47, Mineola, N.Y. 11501, bearing the postmark New York, N.Y. 10017 (indicating a postal zone in Manhattan) and stating that letters of credit had been issued to Fun Tyme Packages, Inc.	1341 and 2
4	February 7, 1975	Cable from M. Vigevani, Banque Fiduciaire, Geneva, Switzerland to Bank of New York, New York, N.Y.	1343 and 2

COUNT THIRTEEN

The Grand Jury further charges:

From in and around 1973 up to and including the date of the filing of this Indictment, in the Southern District of New York and elsewhere, defendants BRAUNIG and GARDNER unlawfully, wilfully, knowingly and for the purpose of conducting, promoting and carrying on by means of the Postal Service the schemes and artifices set forth in the INTRODUCTION and the preceding Counts of this Indictment and other unlawful business, including the defrauding of retail stores, banks, and other commercial enterprises, did use, assume, request to be addressed by, and aid and abet each other in the fraudulent use of, certain fictitious, false, and assumed names and titles other than their own proper names and titles; in particular, MICHAEL S. GARDNER having assumed the name of "S. Michael Gardner," SUSAN M. BRAUNIG assumed such names and titles as "Susan M. Gardner," "Mrs. Susan M. Gardner," "Mrs. S. Michael Gardner," and the like, and both then assumed the name of "S. M. Gardner," and under these names and titles did send matter through the mails and did take and receive mail matter addressed to these fictitious, false and assumed names and titles.

(Title 18, United States Code, Sections 1342 and 2.)

COUNT FIFTEEN

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The Grand Jury further charges:

On or about the 20th day of June, 1975, in the Southern District of New York, defendant BRAUNIG, having taken an oath as a witness that she would testify truthfully before a Grand Jury of the United States District Court for the Southern District of New York and inquiring for that District, unlawfully, wilfully, knowingly, and contrary to her oath did make false material declarations to that Grand Jury.

At that time and place, the Grand Jury was conducting an investigation into possible violations of United States laws, including, among others, laws prohibiting conspiracy to commit any offense against the United States (Title 18, United States Code, Section 371), prohibiting use of the mails in execution of a scheme to defraud (Title 18, United States Code, Section 1341), prohibiting use of false and fictitious names in execution of a mail fraud scheme or other unlawful business (Title 18, United States Code, Section 1342), prohibiting interstate and foreign use of wire communications in execution of a scheme to defraud (Title 18, United States Code, Section 1343), and prohibiting the aiding and abetting of others to commit these and related offenses (Title 18, United States Code, Section 2), to determine whether any persons violated these and related statutes in connection with certain alleged advance fee confidence swindles and related schemes.

It was material to that inquiry to determine, among other things, whether and to what extent the defendant BRAUNIG had assisted GARDNER in his fraudulent enterprises, and whether the defendant BRAUNIG had opened bank accounts, charge accounts, and the like under false and fictitious names such as "S. M. Gardner" in order to conduct unlawful businesses and to funnel into personal uses certain advance fees fraudulently obtained by GARDNER with the aid and assistance of BRAUNIG and other confederates.

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At the time and place aforesaid, the defendant BRAUNIG, appearing as a witness before the Grand Jury, testified falsely under oath with respect to the aforesaid material matters as follows:

FOREMAN: Miss Braunig, I must remind you you're still under oath.

Q. Now, Miss Braunig, have you had a chance to consult with your attorney concerning the direction of the Grand Jury Foreman?

A. Yes, I have, and I have something to say to the Grand Jury. I'm perfectly willing to give you a copy of the name, Braunig, and my attorney has just given me a paper I gave to him yesterday and suggested I give it to the Foreman, stating that on February 26, 1973, as far as the Actors Equity Association is concerned, my registered professional name was changed from Susan M. Braunig to S, period, M, period, Gardner. That was on February 26, 1973, and I had previously been a member with the Actors Equity Association from May of 1969 under the name of Braunig up to that point.

Q. All right.

MR. RAKOFF: Miss Reporter, would you affix a tag to this document, designating it as Grand Jury Exhibit No. 116, please?

(So Marked.)

Q. Now, Miss Braunig, I show you Grand Jury Exhibit 116 and I take it that this is your request to Actors Equity Association to change your name with them; is that it?

A. Well, it's more than a request. Unless it's sent back, stamped -- actually, they told me that Susan M. Gardner was too close to Sue Gardiner that they had, and I had to take S.M. Gardner, which was my second choice.

Q. Who told you that?

A. Uh, this is the notice that I got back. If it had not been approved, it would be stamped. It's stamped on the back. I have the original.

* * *

Q. When did you have this discussion you just told us about regarding Sue Gardiner?

A. I suppose about six weeks before they sent me back this.

Q. And who did you have that discussion with?

A. I do not remember.

Q. Was this a telephone discussion?

A. I don't remember whether it was on the telephone or in person.

Q. You don't remember that?

A. It was three years ago, two years ago, three years ago.

Q. And --

A. Two years ago. Two.

Q. You don't recall whether it was at the office of Actors Equity or over the telephone?

A. I think I may have, when I paid my dues, I may have asked them at that time to check the name, see if it was all right, and to send me the form back, which they did.

* * *

Q. When was the last time you paid your dues at Actors Equity?

A. About two years ago, I'm afraid.

Q. And --

A. But that's not unusual.

Q. Did you ever use the name, Mrs. Susan M. Gardner?

A. At Actors Equity Association? No, I'm S. M. Gardner.

* * *

Q. Can you give us an occasion where you can give us the date or the place or the person that you used the name S. M. Gardner with?

A. Well, I would have to go back and look over old diaries to see if I remember. I don't usually keep a record. You go in for an audition; if you don't get a call back or don't get the job, you don't keep records usually. You'd rather forget it.

Q. Now, this Grand Jury exhibit, No. 116, of which you have the original, is that the single and only piece of paper relating to your change of name to S. M. Gardner?

A. Yes, and that's all that is necessary.

* * *

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- Q. You opened bank accounts under that name, didn't you?
- A. I'm permitted to open bank accounts under that name with the proper identification.
- Q. You are?
- A. Yes.
- Q. Why is that?
- A. Because it's considered a professional name and I'm entitled to use it, as such.
- Q. And where did you open bank accounts?
- A. I don't believe that my personal bank accounts are the subject of this Grand Jury's investigation.

Q. Well, --

- A. However, you do. I've seen checks that you've copied from the only S. M. Gardner bank account, which was Manufacturers Hanover Trust.
- Q. And those were checks that you signed, using the name, Susan M. Gardner?
- A. Yes, because that was what the -- but on the top of the bank account you'll see that it says, "S. M. Gardner," and I've produced sets of identification under the name of Braunig. My passport and also my credit card from Master Charge, which was S. M. Gardner. They suggested that I open an S. M. Gardner account because I was paying my Master Charge bills with Braunig checks and wasn't getting credit for them.

* * *

- Q. Now, did you tell the teller, when you opened that account, the person that you opened that account with, that you were married to Mr. Gardner?
- A. No. I suppose they would assume it, but I never stated it.
- Q. You never stated anything like that, is that it?
- A. I don't remember. I don't remember stating anything like that, but it -- the point of opening the account, actually -- they knew I had a Braunig account there and they knew that my name was Braunig, and they also knew that I was also known as S. M. Gardner and I had my Master Charge account there, and the bank suggested that I open the account as a matter of convenience.

* * *

- Q. And is that the only account you opened, using the name, S. M. Gardner?
- A. Yes. Yes.

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Q. Did you open any accounts, using the name, Susan M. Gardner?

A. No, I have never. No.

Q. No accounts at any bank?

A. No.

Q. Did you ever open an account, using the name, Mrs. Susan M. Gardner?

A. No.

Q. You're sure of that?

A. Definitely.

Q. What about --

A. I mean on the checks, I've only opened an S.M. Gardner checking account at Manufacturers Hanover. I never opened -- on the checks, on the tops of the checks, you'll see it says, "S.M. Gardner".

* * *

Q. Now, Grand Jury Exhibit 116 that you've produced for us, --

A. Um-hm. As matter of fact, you can see the water mark on the paper right here.

Q. -- is dated February 26, 1973?

A. Um-hm, and my Social Security number is on it.

Q. And you mailed it to Actors Equity?

A. No, I believe I dropped it off there.

Q. You went down and dropped it off?

A. Um-hm.

Q. How is it that you have the original if you dropped it off?

A. Because you get two originals; one you keep and one they keep.

Q. I see.

A. I believe -- I don't know what they do with it. They may put it on microfilm after a year, I don't know, I don't remember.

Q. So did you fill out two originals of this?

A. Uh, yes, I believe I did.

Q. Well, --

A. One they give back to you when it's approved. You give both to them, and they give one back to you when it's approved.

Q. So you went down there and handed over two copies of Grand Jury Exhibit 116 and received one back?

A. Yes, I did.

Q. And --

A. And I was told that I must use S.M. Gardner.

* * *

Q. When did you first join Actors Equity?

A. When I went into the production of "The Fantasticks".

Q. And when was that?

A. That was, I believe, May of 1969; and my membership original cost - I'll never forget it - was two hundred fifty dollars.

Q. And between that time, May of '69, and let's just say the end of '69, did you continue to pay your dues?

A. Yes. I -- when I had the money, I paid my dues.

Q. Did you pay dues in 1970?

A. I believe so.

* * *

Q. How did you come to chose the name S. M. Gardner?

A. Possibly because at that time - at that point I had actually -- In one of the offices that we were working in at 285 Madison Avenue associates of Mr. Gardner were doing a production called Svengali, was going to have Mr. Rossano Brazzi star. Mr. Gardner also raises money for Broadway - Off-Broadway productions, he used to be a partner with Mr. Joe Kipnes, the one who had done Applause and other things, at that time they were putting together a production company and they wanted me to change my name, they were going to use me with Brazzi in some small role and they didn't like the name Braunig, and I believe Mr. Jensen suggested I change it to Gardner, I liked the sound of it, at the time no one could pronounce Braunig and spell it properly, I had a great deal of respect for Mr. Gardner and I had decided to change it at that point, it's a much easier name to remember.

* * *

Q. Now, the entire reason then why you changed your name was the reason you just gave us?

A. At that point, yes, that was exactly why I changed it at that point. As a matter of fact, I believe they were about to go into production in February of 1973, they must have files somewhere on that.

Q. Did further reasons occur to you later on?

A. I am not going to discuss that now because my name had already been changed.

Q. When you were working - - when did you first go to work for Mr. Gardner?

- A. Let me think, it was a week before my 25th birthday, most women don't forget their 25th birthday, September 15, 1972.
- Q. And you've worked for him since?
- A. Yes, I have.
- Q. And you were secretary?
- A. Secretary, assistant, gal Friday, receptionist, office manager when it was necessary depending on what office we were in, what was happening.
- Q. Were you his partner?
- A. No. I have no business education and wouldn't begin to try to represent myself as being knowledgeable in the area.
- Q. And you never told anyone that? Let me ask you it the other way around: Did you ever tell anyone you were his partner?
- A. I don't believe - unless I did jokingly, but I really can not imagine saying anything like that and even with Women's Liberation these days no one is going to take someone who looks like I do, as a housewife, as a business partner. But anyone who has been a secretary knows that being a secretary is a very professional, involved, serious job and it requires a lot of energy and interest in what is going on and there are many different kinds of things that are called on in being a secretary.
- Q. What was the name of Mr. Gardner's company at the time you first went to work for him?
- A. Mr. Gardner does not really use corporate names that I am aware of, he has done most of his business under his own name and I was working for him as opposed to working for corporation names.
- * * *
- Q. Did you regard yourself then as the employee of a particular corporation or of S. Michael Gardner?
- A. I was personal secretary to Mr. Gardner himself as opposed to being hired by a corporation; however, when I opened say the Manufacturers Hanover bank account, you must have a company as a reference, I might have used one of the corporations he was working with at the time as a reference.
- Q. As a reference?
- A. As a reference.
- * * *
- Q. Well, did you receive a salary?

- A. No, I have not received a salary. Mr. Gardner makes money sporadically, when he does make money he pays what back bills are due. When he doesn't have the money, I work until he does make money again. How could I ask him say for a weekly salary every week when I know his son is having problems, emotional problems and must be put in a special school and his wife must have tuition paid and kids camp must be paid or rents due or phone bill due or telex bill due or must pay subcontractors that come in to work for him, how can I demand a certain salary every week when I know his salary is very sporadic.
- Q. He is a man who has been in financial difficulty?
- A. Yes and no. He has done everything he can to try to keep back bills up to date, he does pay a lot of things on credit, he used credit extensively, but most businessmen do, but he is very honorable by trying to have the bills paid on time and letting people know exactly what monies are due and what monies are coming, what will be paid and won't be paid.
- Q. Does he keep books?
- A. Yes, and his tax accountant Mr. Herb Kadison, goes through trauma every time he goes over the tax returns trying to figure what is a deductible business expense and what is a personal expense.
- * * *
- Q. Who keeps Mr. Gardner's books?
- A. He doesn't really keep books, he keeps bills paid and bills unpaid, I save all the tax stubs and receipts and all the check books and simply hand poor Herb a big pile of things, let him go work on this.
- Q. Who keeps those bills?
- A. We keep them, we turn them over to him.
- Q. When you say "we," --
- A. In the office.
- Q. You keep them?
- A. I, personally, no, they are kept in the office until the end of the year then turned over.
- * * *
- Q. This year, 1975, who else worked in the office besides you and Mr. Gardner?
- A. I couldn't even begin, we never employed anyone on a fulltime basis, we paid temporary agencies for people. Mr. Gardner has had different associates in different situations for which he has agreed to a set percentage of the fee of whatever he gets and he pays them as he is paid.

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- Q. The corporation whose name you used when you set up the bank at Manufacturers Hanover --
- A. I don't know what you mean by "set up the bank"?
- Q. Set up the bank account, which corporation was that?
- A. I don't remember, I really honestly don't remember.

* * *

- Q. Now, one of Mr. Gardner's companies was called Penguin Products, was it not?
- A. I am trying to remember if it was a company that was also doing business as. That is right. I was never Mr. Gardner's partner, but we did enter into a partnership on Penguin Products Company, we were going to use that. We had a project that had been brought to us by - I don't remember whom - for these discount dinner club books, where you purchase the book for a certain amount of money and you get two for the price of one or free dessert or whatever if you go to a restaurant. We needed a company to do that, we formed Penguin Company, but we never really sold the books. That is a corporation, it is also doing business as.
- Q. You filed papers?
- A. Yes, we did.
- Q. In New York?
- A. We -- I am sorry. I had forgotten about it before.
- Q. That is a joint enterprise between you and Mr. Gardner?
- A. Well, yes. You have to have more than one officer.
- Q. You were one of the officers who was listed on the papers?
- A. Yes, I was, but we never really did anything with it.
- Q. Did you use your stage name or Braunig?
- A. Of course not, because I never represented my stage name as being my legal name and I have never represented my stage name in the business world with any of the business associates that Mr. Gardner had.
- Q. But you did in the bank?
- A. I explained to you that bank account was for a matter of convenience. Actually I had the account first and then I decided to let Mr. Gardner sign in on it. I was given the account before he was given signature power.

- Q. That wasn't the only business situation in which you used the name Gardner, was it?
- A. That wasn't a business situation
- Q. What about accounts at stores?
- A. That is not a business situation.
- Q. You don't regard those as business situations?
- A. I don't regard any of my own personal business as Mr. Gardner's responsibility.
- Q. How do you pay these bills?
- A. I am not going to discuss this. I think it has nothing to do with the matter that you are investigating at the moment, but I have never represented myself as Susan Gardner to anyone who came into Michael's office.
- Q. Just the people outside the office?
- A. Just the people who know me through the theater or socially.

(Title 18, United States Code, Section 1623.)

FOREMAN

THOMAS J. CAHILL
United States Attorney

1 jgds

2 CHARGE OF THE COURT

3 (Pierce, J.)

4 Counsel, Mr. Foreman, ladies and gentlemen
5 of the jury, it now becomes my function to give you the
6 instruction as to the law which is applicable in this case.

7 A Court's instruction as to the law obviously
8 cannot be in the nature of a social conversation. While
9 we struggle to translate legal principles into language
10 as understandable as possible to non-lawyers, it is not
11 always easy to translate complex legal principles into lay
12 language. If you have difficulty following or remembering
13 the instruction, please remember that you can ask for any
14 portion, or all for that matter, of the charge to be read
15 back to you, and as often as you wish.

16 Please remember also that juries struggle with
17 legal principles which are not always easy to understand
18 every week on various floors in this courthouse. And so
19 I will try to present to you these legal principles some-
20 what slowly, there will be some degree of repetition,
21 in an effort to make them as clear as possible to you.

22 Let me thank you for your punctuality, first
23 of all. That's important to us. You were not always called
24 out here at the time we announced that we would begin, but
25 almost invariably we were here doing something or other,

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2 struggling to get you into that box.

3 Let me thank you for the attention which you
4 have given during this trial and for your obvious serious
5 concern with the issues which you are going to have to
6 struggle with here.

7 In serving on a jury, you do render an important
8 civic service. You make it possible for our system, for
9 the administration of justice, to proceed, and for this
10 we are all grateful.

11 I also wish to thank the attorneys for their
12 cooperation during the trial. They have represented their
13 respective parties, their respective positions with pro-
14 fessional skill and competence and dedication and the Court
15 is grateful for this.

16 Now, please give me your close attention. We
17 will break somewhere along the line when it just seems
18 like we should and then we will resume and move on with
19 it.

20 First let me tell you some general principles
21 as to your duty, as to what you may and may not consider
22 during your deliberations. As I've told you, it is the
23 judge's function to instruct you as to the law which applies
24 in the case and it is your duty to accept the law as I
25 state it to you and it is your duty to apply the law to

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2 the facts in this case as you find those facts to be from
3 the evidence presented here.

4 Now, I ask you not to single out any one in-
5 struction alone as stating the law but rather to consider
6 the instruction as a whole. And the logical result of
7 your application of these legal principles to the facts
8 as you find them should be a verdict.

9 Now, you are the sole and exclusive judges of
10 the facts in the case. You are the ones who pass upon the
11 weight of the evidence. You are the ones who determine
12 the credibility of the witnesses. You are the ones who
13 resolve such conflicts as there may be in the evidence.
14 And you are the ones who draw such reasonable inferences
15 as may be warranted by the testimony and the exhibits and
16 stipulations in this case.

17 With respect to any matters of fact, it is your
18 recollection and only yours which governs. Anything that
19 the attorney for the government or the attorney for the
20 defendant may have said with respect to any matters in
21 evidence or as to any factual matters is not to be sub-
22 stituted for your own independent recollection of the
23 evidence or the facts in this case. And, by the same
24 token, anything which I have said or may say with respect
25 to any matters in evidence or as to any factual matters

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2 is not to be taken in lieu of your own independent recollec-
3 tion.

4 You are not to assume that I have any opinion
5 as to whether or not the defendant is guilty or not guilty,
6 or as to the truth or falsity of the charges asserted in
7 the indictment. The fact that I have asked questions or
8 granted or denied motions during the course of this trial
9 is not be taken as any indication that the defendant is
10 believed by this Court to be either guilty or not guilty.

B2 11 Further, the attorneys have the right, on the
12 offer of certain evidence, to press legal objections, and
13 in doing so they are simply performing their duty.

14 In your deliberations to determine the facts
15 and whether the government has established the elements
16 of the crimes charged, and you are going to hear more from
17 me on these elements, so just hold that part, you are to
18 consider solely the testimony which you have heard from
19 the witnesses, any stipulations of fact which the lawyers
20 have agreed upon, and any and all exhibits which have been
21 received into evidence, and even any lack of material evi-
22 dence, but nothing else.

23 I told you earlier that certain evidence was
24 being received subject to connection. I instructed you
25 that with respect to such evidence I have found that it

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2 has been connected and thus it may be considered by you
3 along with all other evidence in the case. Please remember
4 that this ruling does not in any way represent a finding
5 on my part as to what the facts are. That determination
6 has to be made by the jury. I have simply ruled that you
7 may now consider evidence which might have had that limita-
8 tion imposed upon it earlier.

9 You will recall that I admitted certain evidence
10 of absent persons, such as acts and statements of Mr. Gardner
11 and Mr. Guthrie. You may consider such evidence first in
12 determining whether such persons were participants in any
13 scheme charged in the indictment which you find to exist.
14 Further, when people enter into a joint scheme to accomplish
15 an unlawful end, they become agents for one another in
16 carrying out the scheme, and hence the acts or declarations
17 of any one of them in the course of the scheme and in
18 furtherance of the common purpose are deemed to be the acts
19 of all and all are responsible for such acts.

20 Accordingly, if you find, in accordance with
21 these instructions, that one or more of the schemes to
22 defraud charged in the indictment existed, then acts done
23 and statements and declarations made in furtherance of any
24 such scheme by any person found by you to have knowingly
25 been a member of the scheme may be considered against the

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2 defendant if you find that she was also a member, even if
3 such acts or declarations were made in the absence of the
4 defendant and without the knowledge of the defendant.

5 Now, you'll hear more about that from me in a
6 while. But it is important to note that this principle
7 applies only to the acts and declarations done or made
8 during the continuance of the scheme and in furtherance of
9 the scheme, that is, to carry out an unlawful objective
10 or purpose of the scheme, which is charged. This principle
11 does not apply to acts or declarations which do not have
12 each of these characteristics. More about that later.

13 In the determination of whether the defendant
14 is guilty or not guilty of the crimes charged, you must
15 remember that guilt is personal and that the determination
16 of whether the defendant is guilty or not guilty must be
17 determined solely on the evidence in the case.

18 Now, as you approach your function, which is
19 the determination of whether the defendant is guilty or
20 not guilty, please remember that it is your duty to weigh
21 the evidence calmly and dispassionately and without preju-
22 dice and without sympathy for or against either party.
23 The fact that the government is a party here or that the
24 prosecution occurs in the name of the United States of
25 America entitles it to no greater consideration than that

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2 accorded to the defendant in this case. And by the same
3 token it is entitled to no less consideration. All parties,
4 government and individuals alike, stand equal before the
5 law.

6 Now, the indictment in this case contains six
7 counts. The defendant has pleaded not guilty to those
8 counts. Consequently, if the defendant is to be convicted,
the government has the burden of proving each and every
10 element of the crimes charged against her beyond a reason-
11 able doubt, and the burden of proving guilt beyond a reason-
12 able doubt never shifts, it remains upon the government
13 throughout the trial.

14 The law never imposes upon a defendant in a
15 criminal case the burden of calling any witness or producing
16 any evidence. You may draw no unfavorable inference
17 against the defendant because she did not take the stand
18 and testify. In addition, you may not speculate as to why
19 the defendant chose not to testify. Nor may you speculate
20 as to what the defendant might have stated had she chosen
21 to testify.

22 In every criminal case there is a constitutional
23 rule which every defendant has a right to rely upon. It
24 is the rule that no defendant is compelled to take the
25 witness stand. It is the prosecution which must prove a

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2 defendant guilty as charged beyond a reasonable doubt.

3 A defendant is not required to disprove anything. She is
4 nor required to establish her lack of guilt. Also, the
5 defendant has no obligation to call any witnesses on her
6 behalf or offer any evidence whatsoever. In short, it is
7 up to the government, under our system of law, to prove
8 beyond a reasonable doubt every element of the crimes
9 charged in the indictment.

10 The defendant is presumed to be not guilty of
11 the accusations contained in the indictment, and this
12 presumption continues throughout the trial and, indeed,
13 even during the course of your deliberations in the jury
14 room. So the presumption of innocence is sufficient to
15 acquit the defendant of crimes charged unless it is over-
16 come by evidence that satisfies your minds beyond a reason-
17 able doubt of her guilt.

18 And so now the question arises, what is a
19 reasonable doubt? It is a doubt which a reasonable person
20 has after carefully weighing all the evidence. It is the
21 kind of doubt which would make one hesitate to act in the
22 most important affairs of your own life. It is a doubt which
23 appeals to your reason, your judgment, your common sense
24 and your experience. It is not caprice or whim or specula-
25 tion, it is not an excuse to avoid the performance of an

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2 unpleasant duty, nor is it sympathy for any party.

3 If, after a fair and impartial consideration
4 of all the evidence in this case or lack of evidence, you
5 can honestly say that you do not have an abiding belief
6 as to the defendant's guilt, then you have a reasonable
7 doubt and it is your duty to acquit. On the other hand,
8 if, after a fair and impartial consideration of all of the
9 evidence in this case, you can honestly say that you do
10 have an abiding belief as to the defendant's guilt, then
11 you have no reasonable doubt and it is your duty to convict.

B3 12 Belief beyond a reasonable doubt does not
13 mean positive certainty beyond all possible doubt. The law
14 in a criminal case is that it is sufficient if the guilt
15 of a defendant is established beyond a reasonable doubt,
16 not beyond all possible doubt.

17 From time to time you may have heard reference
18 made to direct evidence and to circumstantial evidence.
19 Let me explain the difference between the two.

20 Direct evidence is where a witness testified
21 to what he or she saw, heard or observed, what he or she
22 knows of his or her own knowledge, something which comes
23 to the individual by virtue of his or her own senses. That
24 is direct evidence.

25 Circumstantial evidence is evidence of facts

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2 and circumstances from which one may infer connected facts
3 which reasonably follow in the common experience of mankind.
4 To state it somewhat differently, circumstantial evidence
5 is a fact or a series of facts in evidence which have a
6 logical tendency to lead the mind to a conclusion that
7 another fact exists even though there is no direct evidence
8 to that effect.

9 Let me give you one brief example. If, when you
10 filed out of this courtroom during a recess, you could see
11 that it was raining outside and all of the windows in the
12 courtroom were closed and you saw that that was so, and
13 all of the windowsills beneath the windows were dry and
14 you saw that that was so, and then after a ten or fifteen-
15 minute recess you come back to the courtroom and you find
16 that all of the windows are still closed and you look out
17 and you see that it is still raining, if you saw water on
18 the windowsills upon your return you could conclude that
19 someone had opened the windows and that rain had come into
20 the courtroom and fallen upon those windowsills.

21 Now, you would arrive at such a conclusion
22 from circumstantial evidence. In other words, you would
23 infer, on the basis of reason and experience and common
24 sense, from one or more established facts the existence
25 of some further fact.

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2 A conviction may not rest upon suspicious
3 circumstances alone. However, circumstantial evidence, if
4 believed, is of no less value than direct evidence, for in
5 either case you have to be convinced beyond a reasonable
6 doubt of the guilt of the defendant.

7 There are times when different inferences may
8 be drawn from the same facts, whether proved by direct or
9 by circumstantial evidence. The government asks you to
10 draw one set of inferences, the defendant another. Well,
11 it is for you and you alone to decide what reasonable in-
12 ferences you chose to draw from the evidence in this case,
13 and indeed it is your duty to determine the reasonable
14 inferences to be drawn from the facts in this case as you
15 find those facts to be from the evidence. But you may not
16 indulge in guesswork or speculation.

17 Now, there are a number of factors which are
18 not evidence in this case and which you may not consider
19 during your deliberations. If during the course of the
20 trial a question was asked and an answer was interposed
21 and if I sustained the objection, then you are to disregard
22 the question and any alleged facts in the question. If
23 there was an answer to the question, you are to disregard
24 the answer. And similarly, if I ruled that an answer
25 be stricken from the record, you are to disregard the

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2 answer and the question in your deliberations. They are
3 not evidence and therefore cannot be considered by you
4 in any respect.

5 Also, as I told you at the beginning of the
6 trial, an indictment is not evidence. Now, this is impor-
7 tant for you to note, as are all of these principles. I
8 am going to send in a copy of the indictment, when you be-
9 gin your deliberations, to aid you. You must remember that
10 an indictment is not evidence. It is an accusation. It
11 is a procedure by which persons who are accused by a grand
12 jury of crimes are brought to trial. Whether the person
13 so accused is guilty or not guilty of the crimes charged
14 in that indictment is determined by a jury such as you are.

15 Also, Michael Gardner and Sy Guthrie, who are
16 named in the indictment, are not on trial here and you are
17 not to consider their absence as evidence of any kind for
18 any purpose. The disposition of the indictment with respect
19 to each of them is of no concern to you as jurors and you
20 are not to speculate as to the reason why they are not on
21 trial here.

22 Lastly, I should tell you that, as you are well
23 aware, there have been several occasions during the course
24 of the trial, a number of occasions, when the attorneys
25 have had to confer with the Court out of your hearing.

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2 You should not speculate as to what was being discussed.
3 These conferences are held at the bench in order to avoid
4 having you listen to legal arguments on questions of law,
5 which concern really only counsel and the Court.

6 Now, as jurors you are the sole judges of the
7 credibility of the witnesses who testified and you are the
8 sole judges of the weight their testimony deserves. You
9 know that there is no automatic way to decide who is telling
10 the truth and who is not. Credibility can be equated with
11 believability. If a witness is credible, you say he or
12 she is believable.

13 You should carefully scrutinize all of the
14 testimony given, both on direct examination or cross-
15 examination and otherwise, and also the circumstances under
16 which each witness has testified, and every matter in
17 evidence which tends to show whether a witness is worthy
18 of belief. Consider the witness' ability to observe the
19 matters as to which he or she has testified and whether
20 the witness impresses you as having had an accurate recol-
21 lection on such matters.

22 When judging credibility, consider any relation
23 any witness may bear to any side of the case, consider the
24 manner in which each witness might be affected by the
25 verdict and the extent to which, if at all, each witness

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is either supported or contradicted by other evidence in the case.

A witness may be discredited or impeached by contradictory evidence. If you believe that any witness has been impeached and thus discredited, it is your exclusive province to give the testimony of that witness such credibility, if any, as you think it deserves. If you find that any witness has willfully testified falsely as to any material matter, you may reject the entire testimony of the witness or you may accept such portion of it as you believe to be true.

In this case you have heard testimony from persons whom we call expert witnesses. Witnesses who by education and experience have become expert in some science, profession or calling may state their opinions as to relevant and material matter in which they profess to be expert and may also state their reasons for the opinion.

You will recall the witness Donald Stangel testified about handwriting and about the certification stamp, and Detective Horvath from Canada testified concerning check kiting. Your role in adjudging credibility applies to experts as well as to any other witness. You should consider the expert opinion received in evidence in this case and give it as much or as little weight as you

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2 think it deserves.

3 If you should decide that the opinion of an
4 expert is not based upon sufficient education or experience,
5 or if you should conclude that the reasons given in support
6 of an opinion are not sound, or that the opinion is out-
7 weighed by other evidence, or that the trustworthiness of
8 the expert or his credibility is questionable for some
9 other reason, including the reason of relationship to one
10 party or another, then you may disregard the opinion entire-
11 ly.

12 With regard to all witnesses the ultimate
13 question for you to decide in passing on the credibility
14 of the witness is did the witness tell the truth before you.
15 It is for you to say whether a witness' testimony at this
16 trial was truthful or untruthful in whole or in part.

17 Now, this completes my general instructions with
18 regard to what your duty and function is and with regard
19 to what you may or may not consider in your deliberations.
20 I am going to turn now to a discussion of the specific
21 charges against the defendant and instruct you as to what
22 essential elements the government must prove beyond a reason-
23 able doubt in order to sustain the charges against the
24 defendant.

25 The indictment in this case is in several parts.

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2 The first part is an introduction. This describes in
3 general terms the structure of various transactions which
4 the government alleges were schemes to defraud devised by
5 the defendant together with others in order to defraud
6 or falsely obtain money from various persons or businesses.

7 The introduction describes one of these trans-
8 actions as an advance fee scheme. It describes another
9 transaction charged against the defendant as a fraudulent
10 check scheme, and another as a fictitious names and titles
11 scheme.

12 The second part of the indictment consists of
13 four so-called fraud counts. The defendant is charged in
14 each of these counts. The crime charged in each count is
15 doing an act or causing or aiding and abetting someone else
16 to do an act, such as using interstate wire facilities or
17 using the mail, in order to execute one of the alleged un-
18 lawful schemes to defraud.

19 And the third part of the indictment consists
20 of the so-called fictitious names and titles count. In
21 this count the defendant is charged with having used or
22 having aided and abetted Michael Gardner in the use of
23 fictitious names and titles in furtherance of the alleged
24 unlawful mail or wire fraud schemes charges in earlier
25 counts and in furtherance of an alleged unlawful scheme to

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2 defraud retail stores, banks and other commercial enter-
3 prises.

4 Finally, the defendant is charged in one count
5 with having made false material statements before the grand
6 jury.

7 Now, with regard to each of the crimes charged
8 in the indictment I will discuss separately with you the
9 elements which must be proved by the government beyond a
10 reasonable doubt before the defendant may be found guilty
11 of any particular count. Before doing so I will first read
12 a portion and summarize a portion of the indictment:

13 "United States of America vs Michael S. Gardner,
14 (also known as S. Michael Gardner and as S.M. Gardner),
15 Susan Braunig, (also known as Mrs. Susan M. Gardner and
16 as S.M. Gardner), and Sy Yoakum Guthrie III, defendants.

17 "Counts One through Five.

18 "Introduction."

19 And I am reading in pertinent part:

20 "The Grand Jury charges:

21 "From in and around December, 1973 up to and
22 including the date of the filing of this indictment" --

23 Can we agree, gentlemen, that it was January 9,
24 1976?

25 MR. KAPLAN: Yes, your Honor.

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2 THE COURT: All right.

3 -- "in the Southern District of New York and
4 elsewhere, Michael S. Gardner, (also known as S. Michael
5 Gardner and as S.M. Gardner, and hereinafter called Gardner),
6 and Susan M. Braunig, (also known as Mrs. Susan M. Gardner
7 and S.M. Gardner, and hereinafter called Braunig), defend-
8 ants, together with Sy Yoakum Guthrie III, (hereinafter
9 called Guthrie), defendant in Counts Three and Four of
10 this indictment, and also together with others known and
11 unknown to the Grand Jury, hereinafter called confederates,
12 unlawfully, willfully and knowingly did devise and intend
13 to devise schemes and artifices to defraud and to obtain
14 money and property from victims such as Barclay's Bank of
15 New York, Counts One and Two; Fun Tyme Packages, Inc.,
16 Counts Three and Four; and retail stores, banks and other
17 commercial enterprises, Count Five, by means of false and
18 fraudulent pretenses, representations and promises, in the
19 form of an "advance fee" scheme and related schemes, also
20 involving false and fictitious names and titles, false
21 forged and spurious checks, instruments, and obligations."

B5 22 Counts One and Two, the Barclay's counts, and
23 I summarize:

24 The grand jury charges the defendants Gardner
25 and Braunig, for the purpose of executing in particular the

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scheme relating to the defrauding of Barclay's Bank of New York by means of false, forged and spurious checks, caused Barclay's Bank of New York and its agents to send through the mails for collection two fraudulent checks in violation of the federal mail fraud statute.

Counts Three and Four, the Fun Tyme counts. The grand jury charges, and I am summarizing, the defendants Gardner, Braunig and Guthrie, for the purpose of executing in particular the advance fee scheme relating to Fun Tyme Packages, Inc., did cause a particular letter from Gardner to Mark Parker in Mineola to be placed in the mails in violation of the federal mail fraud statute, and did cause a cable from Mr. Vigevani in Switzerland to be sent by wire to the Bank of New York in New York in violation of the federal wire fraud statute.

I will summarize the other two counts later.

Now as I've told you, we don't expect you to try to remember the precise wording of these counts. You will have available to you a copy of the indictment in the jury room when you retire to deliberate. I remind you that an indictment is not evidence.

Now let me turn first to that portion of the indictment which contains the four counts that charge violations of federal anti-fraud statutes, that is, laws passed

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2 by the Congress which are generally referred to as the mail
3 fraud and the wire fraud statutes.

4 The mail fraud statute, which pertains to Counts
5 One, Two and Three, that is, the two Barclay counts and
6 the first Fund Tyme count, provides as follows in pertinent
7 part:

8 "Whoever, having devised or intending to devise
9 any scheme or artifice to defraud, or for obtaining money
10 or property by means of false or fraudulent pretenses,
11 representations or promises...for the purpose of executing
12 such scheme or artifice, or attempting to do so, places in
13 any Post Office or authorized depository for mail, matter...
14 to be sent or delivered by the Postal Service, or takes
15 or receives therefrom, any such matter...or knowingly caused
16 to be delivered by mail...any such matter..." commits a
17 crime.

18 This is the mail fraud statute. In short, the
19 use of the mails in furtherance of a fraudulent scheme
20 is prohibited.

21 A separate statute, using the same introductory
22 language as to the scheme or artifice to defraud, prohibits
23 wire fraud. This statute pertains to Count Four, the second
24 Fun Tyme count, and it provides as follows:

25 Whoever, having devised, or intending to devise,

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2 any scheme or artifice to defraud, or for obtaining money
3 or property by means of false or fraudulent pretenses,
4 representations or promises...transmits or causes to be
5 transmitted by means of wire, radio or television communi-
6 cation, in interstate or foreign commerce, any writings,
7 signs, signals, pictures, or sounds for the purpose of
8 executing such scheme or artifice" commits a crime.

9 Now, this is the wire fraud statute, and the
10 language referred to extends generally to the interstate
11 or foreign use of such facilities as telephones, telegrams
12 and cables.

13 Now, there is another federal statute which
14 also comes into play. Just a trifle about it here and then
15 more about it later. This is called the aiding and abetting
16 law, which provides that a person who aids, abets, counsels,
17 commands, induces or procures the commission of an offense
18 against the United States is equally punishable as the
19 person who commits the offense.

20 Under the aiding and abetting law, a person
21 who willfully causes an act to be done which if directly
22 performed by her or another would be an offense against
23 the United States is punishable just as if she herself did
24 the act. And now, I am going to discuss that in more
25 detail a little bit later.

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2 In short, the crime with which the defendant
3 Braunig is charged in the Barclay's and the Fun Tyme counts,
4 Counts One through Four of the indictment, involves doing
5 an act or causing or abetting or aiding someone else to
6 do an act, such as using the mails or interstate wire
7 facilities, in order to execute one of the schemes to defraud
8 outlined in the indictment.

9 The mail fraud and wire fraud statutes contain
10 the same elements, except, of course, the mail fraud
11 statute involves the use of the mails and the wire fraud
12 statute involves interstate or international use of tele-
13 phone, telegrams or cables, all in execution or in further-
14 ance of the alleged scheme to defraud.

15 In order to find the defendant violated the
16 mail fraud or wire fraud statutes in connection with the
17 particular counts in which she is charged, the government
18 must prove beyond a reasonable doubt the following essential
19 elements:

20 one, that a scheme or artifice to defraud to
21 obtain money by false and fraudulent pretenses, representa-
22 tions or promises, as alleged in the indictment, existed;

23 two, that the defendant knowingly and willfully
24 participated in the scheme or artifice to defraud with
25 knowledge of its fraudulent nature and with intent to defraud;

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2 and

3 three, that as to each count the defendant
4 either used or caused the use of the mails or the use of
5 interstate or international wire facilities in execution
6 or furtherance of the scheme charged in connection with the
7 particular count you are considering.

B6 8 Now let's take each element separately. Back
9 to the first.

10 The first element of the offense charged in
11 each of the fraud counts is the existence of a scheme or
12 an artifice to defraud. A scheme or artifice is a plan for
13 the accomplishment of an object. A scheme or artifice to
14 defraud is any plan, device or course of action intended
15 to deceive others and to obtain money or property from such
16 persons by means of false or fraudulent pretenses, repre-
17 sentations or promises calculated to deceive persons of
18 average prudence and comprehension.

19 A statement, representation, claim or document
20 is false or fraudulent if it was material and if it was
21 untrue when made and if the person making it or causing it
22 to be made knew it to be untrue or deliberately blinded
23 herself to the knowledge that it was false and if it was
24 made and caused to be made with the intent to deceive.

25 Now, the fraud prohibited by the statute is

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2 not limited to active misrepresentation. A fraudulent
3 scheme may exist although no express misrepresentation of
4 fact is made. The deceitful concealment of material fact
5 or the deceitful representation of half truths may also
6 constitute actual fraud and the devising of a scheme
7 for obtaining money or property by any such half truths or
8 concealment or by creating a false impression is in viola-
9 tion of a statute.

10 If there is deception, the manner in which it
11 is accomplished is immaterial. The law does not require
12 that the government prove all the pretenses, misrepresenta-
13 tions or concealments charged in the indictment. It is
14 sufficient as to any count if the government proves beyond
15 a reasonable doubt that at least one pretense, misrepre-
16 sentation or concealment of material fact was made in
17 furtherance of a scheme to defraud as charged in that count.
18 However, you must be persuaded beyond a reasonable doubt
19 of the actual existence of the scheme or artifice to de-
20 fraud which is charged.

21 In this regard I charge you that it is not
22 necessary that you find that the scheme charged actually
23 succeeded or that the defendant realized any gain from any
24 scheme. Nor is it necessary for the government to establish
25 that the alleged victims suffered any loss. The crime

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2 charged is the scheme and not the result of the scheme.

3 Likewise, since the devising of a scheme or
4 artifice concerns the defendant's conduct and intent, should
5 you find that, as charged, a scheme to defraud existed, it
6 is not defense that the victims themselves may have made
7 inaccurate representations or entered into agreements that
8 they could not fulfill.

9 Now moving on to the second element. I think
10 what we will do is take the second and take the third and
11 then take a recess.

12 The second element that the government must
13 prove beyond a reasonable doubt as to each of the fraud
14 counts in order for you to convict the defendant is that
15 the defendant participated in the scheme or artifice to
16 defraud charged in connection with that count, that she
17 became a party to it knowingly, willfully and with intent
18 to defraud.

19 Well, what do these words mean? "Knowingly"
20 means to act purposely and deliberately rather than through
21 mistake, inadvertance or other innocent reason. "Willfully"
22 means to act voluntarily and intentionally and with specific
23 intent to do something which the law forbids, that is to
24 say to act with the purpose either of disobeying or dis-
25 regarding the law.

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2 "Intent to defraud," what does that mean? It
3 means to act knowingly and with the specific intent to de-
4 ceive for the purpose of either causing some financial loss
5 to another and/or bringing about some financial gain to
6 one's self.

7 "Fraudulent intent" is one of the essential
8 elements of the offenses with which the defendant is charged.
9 Fraudulent intent is not presumed or assumed. It is per-
10 sonal and not imputed. One is chargeable with her own
11 personal intent, not with the intent of some other person.

12 Good faith constitutes a complete defense to
13 a person charged with an offense of which fraudulent intent
14 is an essential element. One who acts with honest intention
15 is not chargeable with fraudulent intent. One who expresses
16 an opinion honestly held by her or a belief honestly enter-
17 tained by her is not chargeable with fraudulent intent
18 even though such opinion is erroneous and such belief is
19 a mistaken belief.

20 Evidence which establishes only that a person
21 made a mistake in judgment or an error in management or
22 was careless does not establish fraudulent intent. In
23 order to establish fraudulent intent on the part of a person,
24 it must be established by the government that such person
25 knowingly and intentionally attempted to deceive another

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2 person.

3 At the same time, it is no defense that the
4 defendant, knowing that her representations were false,
5 if that should be your finding, or that her actions were
6 fraudulent, if that should be your finding, spoke or acted
7 out of a belief that ultimately everything would work out
8 so that no one would suffer any monetary loss. Nor is it
9 a defense that the defendant first made her representations
10 in good faith if later, at any time charged within the
11 period covered by the indictment, she realized the repre-
12 sentations were false and yet deliberately continued to
13 make them.

14 However, I instruct you that if you should find
15 that at the time a representation was made it was then true
16 and correct, the mere fact that thereafter circumstances
17 changed, making that representation later on true, would
18 not warrant a verdict of guilty.

19 In order to sustain the charges against the
20 defendant, the government must establish beyond a reasonable
21 doubt that the defendant knew that her conduct as a partici-
22 pant in the scheme you are considering was calculated to
23 deceive potential victims and nonetheless she willfully
24 associated herself with the alleged fraudulent scheme with
25 a specific intent to defraud. If you find, with respect to

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2 any count charged, that the defendant did not act with a
3 specific intent to defraud, then you may not convict the
4 defendant as to that count regardless of whether you approve
5 or disapprove of any of the motives or the actions of the
6 defendant.

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7 You may find that the defendant had actual
8 knowledge of the falsity of statements alleged to have
9 been misrepresentations if you find beyond a reasonable
10 doubt that the defendant acted with a deliberate disregard
11 of whether the statements were true or false and with a
12 conscious purpose to avoid learning the truth. However,
13 remember that mere knowledge of another's plans to defraud
14 is not sufficient to convict a defendant if you do not
15 find beyond a reasonable doubt that the defendant intended
16 to defraud.

17 And, also, mere association with others involved
18 in such a scheme does not establish that the defendant
19 participated in the scheme charged.

20 I think we will interrupt here. We still have
21 more to go in the second element before I get to the third,
22 but it has been an hour. Let's take fifteen minutes.

23 Do not yet begin your deliberations, and don't
24 talk about the case and don't talk with anybody else.

25 Lead the jury out.

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2 (Recess)

3 THE COURT: Now, there has been some discussion
4 in this case about the role of a finder. A "finder" is
5 a term that is often used synonymously with "broker." A
6 finder can be a person who brings parties to a financial
7 or commercial transaction together and receives a fee for
8 doing so, and there is nothing illegal or improper per se
9 about a person working as a finder in the financial world.

10 In determining whether the defendant knowingly
11 and willfully and with an intent to defraud committed the
12 offenses with which she is charged, issues of fact are
13 presented and, clearly these issues concern what is in
14 one's mind. Obviously, it is not always possible to ascer-
15 tain or prove directly the operation of the mind or the
16 intention of a defendant. You cannot look into the defend-
17 ant's mind to see what her intentions were. But you are
18 able to consider all the facts and circumstances shown by
19 the evidence and the exhibits in this case and you are able
20 to draw your own conclusions with a reasonable degree of
21 accuracy as to what, if anything, the intentions of the
22 defendants were.

23 Intent involves a mental attitude. From evidence
24 of particular actions coupled with evidence of surrounding
25 circumstances one may choose to draw certain conclusions.

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2 In other words, proof of the circumstances surrounding a
3 person's actions, if found to exist, can supply an adequate
4 basis for a finding, should you choose to make it, that the
5 defendant acted knowingly and willfully.

6 There is evidence in this case which the govern-
7 ment asserts constitutes admissions by the defendant.
8 Admissions by a defendant, should you find such to have
9 been made, constitute weighty evidence against the defend-
10 ant. Accordingly, if you find that any such admissions were
11 made by the defendant, you are entitled to give great weight
12 to such evidence.

13 There was certain evidence which was admitted
14 during the trial solely as bearing on the question of
15 intent. You have heard evidence which may lead you to
16 believe that the defendant was involved in one or more
17 alleged incidents which are said by the government to be
18 similar to the acts with which the defendant is charged in
19 the indictment in this case. The evidence of this type
20 presented here includes that relating to the alleged State
21 Bank of Albany matter, the certification stamp evidence,
22 and the matters referred to by the witness Horvath, the
23 detective from Canada, and the alleged change of name matter.

24 It is for you, the jury, in considering this
25 evidence, to determine whether it is evidence of acts

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2 similar to the acts charged here. I instruct you that this
3 evidence is not to be considered by you in determining
4 whether the defendant committed the acts charged in the in-
5 dictment in this case or for any other purpose, unless you
6 first find that the other evidence which you have heard
7 standing alone establishes beyond a reasonable doubt that
8 the defendant committed the acts charged in this indictment.

9 Now, if you find beyond a reasonable doubt,
10 based solely on the evidence other than the alleged similar
11 acts, that the defendant did commit the acts charged in
12 the indictment here, then you may consider evidence of the
13 alleged similar acts of the defendant to whatever extent
14 you wish in determining her state of mind, motive or intent,
15 that is, the intent with which the defendant did any of
16 the acts in this case which you have found occurred.

17 Now, if you find that a similar act has been
18 established by the government as to the defendant, then
19 you may draw an inference from that, although you are under
20 no obligation to do so, that in doing the acts charged in
21 the indictment here the defendant acted knowingly and in-
22 tentiously and not because of mistake or accident or for
23 other innocent reasons. But in no event are you to con-
24 sider such evidence as proving the character or disposition
25 of the defendant or to show that she acted in conformity

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2 therewith.

3 I remind you also that you are not to consider
4 any such act which you find to have been established only
5 as to some other person as evidence against the defendant
6 here for any purpose.

7 If, from your assessment of the evidence in
8 this case, you find that the defendant at any time gave
9 false statements in an attempt to exonerate herself, you
10 may consider such statements as circumstantial evidence
11 from which consciousness of guilt or criminal intent may
12 be inferred. Whether or not the evidence of any such
13 statements points to a consciousness of guilt and the
14 significance, if any, to be attached to any such evidence
15 are matters for your determination.

16 To conclude on the second element, knowledge
17 of falsity of the representations and the specific intent
18 to defraud or deceive charged is an essential element of
19 the crimes charged in Counts One through Four of the indict-
20 ment. Accordingly, if you find that the defendant lacked
21 such knowledge and intent or that she acted in good faith,
22 this would be a defense and you should acquit the defendant.

23 If you find that the government has established
24 beyond a reasonable doubt the first element, that is, that
25 there was a scheme to defraud in existence, and also if

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2 you find the second element, that the defendant was a
3 knowing participant in such a scheme and acted with a
4 specific intent to defraud, then you must to on to consider
5 whether the Government has also established the third ele-
6 ment in order to determine whether you have a sufficient
7 basis upon which to convict the defendant as to the count
8 you are considering.

9 Now, the third element which the Government
10 must prove beyond a reasonable doubt as to each of the
11 two Barclay counts and the first Fun Tyme count requires
12 that the Government prove use of the mails on the first
13 three counts and use of the wires on the fourth count.
14 I will instruct you separately on this third element under
15 each of the statutes. First the mail counts, Counts One,
16 Two and Three. These are the two Barclay counts and the
17 first Fun Tyme count.

18 Before the defendant may be found guilty as
19 to these counts, the Government must prove beyond a
20 reasonable doubt that in furtherance of the scheme to
21 defraud the defendant used the mails or caused the mails
22 to be used in connection with the matter referred to in
23 the particular count which you are considering.

24 Unlike the case of wire fraud, which I will
25 discuss in a minute, it is not necessary to show that the

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2 mail traveled in interstate or foreign commerce. Here the
3 three counts in question, Counts One, Two and Three, re-
4 fer to letters which the Government contends were sent
5 through the mails from New York to, respectively, Toronto,
6 Montreal and Mineola in furtherance of the alleged
7 schemes set forth in the respective counts.

8 Where one does an act with knowledge that the
9 use of the mails will follow in the ordinary course of
10 business, or where such use of the mails can reasonably
11 be foreseen, even though not actually intended, then one
12 causes the mails to be used.

13 Thus, while use of the mails in furtherance
14 of a scheme to defraud is an essential element of the
15 mail fraud charges, it is not necessary to show that the
16 defendant actually mailed any item referred to. It is
17 sufficient if you find that the defendant caused the
18 mailing by others, and this does not require that the de-
19 fendant herself specifically authorized others to do the
20 mailing or specifically intended that the mails be used.

21 Further, the mailed matter need not disclose
22 on its face a fraudulent representation and intent to
23 defraud or that it was mailed in furtherance of a scheme
24 to defraud. It may appear wholly innocent, but it is
25 necessary that the evidence establish beyond a reasonable

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2 doubt that the matter in question was wilfully caused to
3 be mailed, as I have defined "wilfully" for you, by the
4 defendant to help carry out the execution of the scheme
5 to defraud which is alleged in the indictment with respect
6 to the particular count you are considering.

7 The Government must also establish beyond a
8 reasonable doubt that the particular mailing charged in
9 each of these three counts occurred during the existence
10 of the alleged scheme charged in the count and also in
11 its furtherance. If the scheme had entirely ended prior
12 to the mailing, or in no way depended upon the mailing
13 to effect its fraudulent purpose, then the jurisdictional
14 element has not been supplied.

15 Let's turn to the wire fraud count, that is,
16 Count Four. That is the second Fun Tyme count.

17 To sustain its charge that the defendant is
18 guilty of the wire fraud count, the Government must prove,
19 in addition to the two common essential elements I pre-
20 viously mentioned as to all of the four counts, that for
21 the purpose of executing the fraudulent scheme or artifice
22 the defendant caused the transmission of sounds and signals
23 by wire communication in interstate or foreign commerce
24 or caused such use of interstate or foreign wire facilities
25 by another person. I instruct you that interstate or

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2 foreign telephone calls, telegrams, telexes and cables
3 constitute the use of wire communication within the meaning
4 of the statute.

5 Here the charge relates to an alleged cable from
6 Mr. Vigevani in Switzerland to the Bank of New York in
7 New York. As with the mails, if you find beyond a reason-
8 able doubt that the defendant caused interstate tele-
9 phone calls to be made or telegrams or cables to be sent
10 in furtherance of a scheme to defraud, the evidence does
11 not have to establish that the defendant herself directly
12 participated in any telephone conversation or herself
13 sent any telegram or cable or even had specific knowledge
14 of the wire communication. It is sufficient if you find
15 that the defendant caused such communication directly or
16 indirectly.

17 Under the wire fraud statute there is no
18 requirement that the defendant know that the instrument-
19 alities of interstate communication are used or that she
20 foresee that such instrumentalities may be used.

21 Now, I instruct you that it does not matter if
22 a specific transaction is alleged in the indictment to
23 have occurred on or about a certain date and the testimony
24 indicates that in fact it was on another date. The law
25 requires a substantial similarity between the dates alleged

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2 in the indictment and the dates established by the testimony.
3 It is not required that the Government prove that the
4 alleged schemes to defraud started and ended on the dates
5 set forth in the indictment. It is sufficient if you
6 find that an alleged scheme to defraud existed at some
7 time within that period.

8 Another count of the indictment charges the
9 defendant with having violated or with having aided and
10 abetted Michael Gardner to violate what we call Title 18
11 of the United States Code, Section 1342. That is referred
12 to as the fictitious name statute. I will come back to the
13 meaning of "aiding and abetting" shortly.

14 Section 1342 provides, reading in pertinent
15 part:

16 "Whoever, for the purpose of conducting, pro-
17 moting or carrying on, by means of the Postal Service,
18 any scheme or device mentioned in Section 1341 of this
19 Title," that is, the mail fraud statute I've already read
20 to you, "or any other unlawful business, uses or assumes,
21 or requests to be addressed by, any fictitious, false, or
22 assumed title, name,...or name other than his own proper
23 name," commits a crime.

24 Specifically, this count charges, in summary,
25 that for the purpose of executing the scheme set forth

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in the indictment by means of the Postal Service and of defrauding certain stores, banks and commercial enterprises the defendant Gardner and the defendant Braunig used and assumed false and fictitious names and titles. The particulars of these charges to which you should direct your attention are set forth in the indictment.

In order to find the defendant Braunig guilty of the crime charged in the fictitious name count, you must find that the Government has proven the following two essential elements beyond a reasonable doubt:

First, that during the period of time alleged in the indictment the defendant Braunig used, or aided and abetted Michael Gardner in the use of, any of the names and titles specified in the indictment and in this count, such as S. Michael Gardner, Mrs. Susan M. Gardner and S. M. Gardner, and that these names and titles were not her or his own proper name or title but were false, fictitious or assumed;

second, that the defendant Braunig used or aided and abetted Michael Gardner in the use of one or more of these names or titles for the purpose of conducting, promoting or carrying on by use of the mails any mail fraud scheme or any other unlawful business set forth in the indictment.

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For example, the Government contends that the defendant Braunig, with Gardner's help, falsely posed at various times as Gardner's secretary, his assistant, and his wife, and that, using the name of Mrs. Gardner, she was able to give an appearance of substance and respectability that enabled her to open numerous credit accounts on which she thereafter defaulted.

The use of an assumed or fictitious name or title by an individual is not a crime in itself. It may become criminal to use an assumed name or title only if in using that name it is done for a fraudulent purpose. Such use or holding out of an assumed name becomes a crime in terms of the statute we are considering here when it is done for the purpose of carrying out by the use of the mails a scheme to defraud or other unlawful business.

Since the only unlawful businesses charged in this indictment are the various schemes to defraud set out in the indictment, you must find beyond a reasonable doubt all the elements of one or more of the schemes charged before you can make a judgment on this particular count. Then, in addition, you must find beyond a reasonable doubt each of the two further elements of the crime as I have just described them to you before you may convict the defendant on this particular count, the fictitious names or titles

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2 count.

3 In this regard I charge you that merely being
4 in debt or owing money, in the absence of any fraudulent
5 scheme or purpose, is not a crime.

6 I have told you that the defendant is charged
7 with aiding and abetting certain other persons in the
8 commission of the crimes with which she is charged. The
9 aiding and abetting statute provides:

10 "Whoever commits an offense against the United
11 States or aids, or abets, or counsels, commands, or induces,
12 or procures its commission, is punishable as a principal."

13 Under this statute it is not necessary for the
14 Government to show that the defendant herself physically
15 committed the crimes with which she is charged here, in
16 order for you to find the defendant guilty. A person who
17 aids or abets another to commit an offense is just as
18 guilty of that offense as if she committed it herself.

19 Accordingly, you may find the defendant guilty
20 of any of the offenses with which she is charged if you
21 find beyond a reasonable doubt with respect to the particular
22 count you are considering that the Government has proved
23 that another person actually committed the offense with
24 which the defendant is charged and that the defendant aided
25 or abetted that person in committing that offense.

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As you can see from the language of the law, the first requirement is that you must find that another person has committed a crime against the United States. Obviously, one cannot be held responsible for criminal acts of another if no crime was committed by the other person in the first place. But if you do find that a crime was committed by another person, then you must consider whether the defendant aided and abetted the commission of that crime.

In order to aid or abet another to commit a crime in this case, it is necessary that the accused person wilfully and knowingly associated herself in some way with the crime charged and that she wilfully and knowingly seek by some act to help make the crime succeed.

I've already explained the meaning of "wilfully" and "knowingly" to you. The mere presence of a defendant where a crime is being committed, even coupled with knowledge by the defendant that a crime is being committed, or the mere negative acquiescence by a person in a criminal conduct of others, even with guilty knowledge, is not suspicion to establish aiding and abetting.

An aider and abettor must have some interest in seeing the criminal venture succeed. To determine whether the defendant aided or abetted the commission of the

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2 offenses with which she is charged here, ask yourselves
3 these questions: Did she participate in the crimes charged
4 as something she wished to bring about? Did she associate
5 herself with the criminal venture knowingly and wilfully?
6 Did she seek by her actions to help make the criminal
7 venture succeed?

8 If she did, then she is an aider and abettor
9 and is guilty of the offense you have found to have been
10 committed.

11 Now, this completes my charge as to the two
12 Barclays mail fraud counts, as to the Fun Tyme mail fraud
13 count, as to the Fun Tyme wire fraud count, and as to the
14 fictitious names count and I'm now going to explain the
15 final count to you.

16 In the final count of the indictment the Grand
17 Jury charges a violation of the section of the United States
18 Code which provides in pertinent part as follows:

19 "Whoever under oath in any proceeding before...
20 any court or grand jury of the United States knowingly
21 makes any false material declaration" is guilty of a crime.

22 I am not going to read this entire count to you,
23 but I am going to read the introduction, and you will recall
24 that you have already heard during the trial a reading
25 from transcripts of the grand jury proceedings, and further

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2 to aid you in your understanding of this charge you will
3 have a copy of the indictment in the jury room with you.
4 But let me read the introduction:

5 "Count Six.

6 "The Grand Jury further charges:

7 "On or about the 20th day of June 1975, in the
8 Southern District of New York" -- that embraces this
9 county, New York County -- "the defendant Braunig, having
10 taken an oath as a witness that she would testify truth-
11 fully before a grand jury of the United States District
12 Court for the Southern District of New York, and inquiring
13 for that District, unlawfully, willfully, knowingly and
14 contrary to her oath did make false material declarations
15 to the Grand Jury.

16 "At that time and place the Grand Jury was
17 conducting an investigation into possible violations of
18 the United States laws, including, among others, laws
19 prohibiting conspiracy to commit any offense against the
20 United States, Title 18, United States Code, Section 371,
21 prohibiting use of the mails in execution of a scheme
22 to defraud, Title 18, United States Code, Section 1341,
23 prohibiting use of false and fictitious names in execution
24 of a mail fraud scheme or other unlawful business, Title
25 18, United States Code, Section 1342, prohibiting interstate

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2 and foreign use of wire communications and execution of
3 a scheme to defraud, Title 18, United States Code, Section
4 1343, and prohibiting the aiding and abetting of others
5 to commit these and related offenses, Title 18, United
6 States Code, Section 2, to determine whether any persons
7 violated these and related statutes in connection with
8 certain alleged advance fee confidence swindles and related
9 schemes.

10 "It was material to that inquiry to determine,
11 among other things, whether and to what extent the de-
12 fendant Braunig had assisted Gardner in his fraudulent
13 enterprises and whether the defendant Braunig opened bank
14 accounts, charge accounts and the like under false and
15 fictitious names, such as S. M. Gardner, in order to
16 conduct unlawful business and to funnel into personal
17 uses certain advance fee moneys fraudulently obtained by
18 Gardner with the aid and assistance of Braunig and other
19 confederates.

20 "At the time and place aforesaid the defendant
21 Braunig, appearing as a witness before the Grand Jury,
22 testified falsely under oath with respect to the afore-
23 said material matters as follows:"

24 And, as I've indicated, you've heard all of
25 this read to you during the trial. You can draw on your

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2 recollection of that which was read from the Grand Jury
3 transcripts, which are in evidence.

4 Now, in order to sustain its burden of proof
5 as to this count of the indictment, the Government must
6 establish beyond a reasonable doubt each of the following
7 elements:

8 First, that on or about the dates set forth in
9 the indictment the defendant Braunig took an oath to
10 testify truthfully before a grand jury sitting in the
11 United States District Court for the Southern District of
12 New York, a body authorized to administer oaths;

13 second, that the defendant made false statements
14 as to matters about which the defendant testified under
15 oath as set forth in the indictment;

16 third, that the false statements were wilfully
17 made, that is, that at the time the defendant made these
18 statements she knew them to be false;

19 fourth, that the matters as to which it is
20 charged that the defendant made false statements were
21 material to the issues under inquiry by the grand jury.

22 The law recognizes no excuse or justification
23 for perjury. A witness is compelled by law to testify
24 truthfully under oath before a competent tribunal, such
25 as the district court or such as a grand jury. In this

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2 case the attorneys have stipulated, and therefore there
3 is no dispute, that the defendant Braunig appeared before
4 a Grand Jury of the United States District Court for the
5 Southern District of New York during May and June of 1975
6 and that she took an oath that she would testify truth-
7 fully.

8 I charge you as a matter of law that the matters
9 as to which the defendant testified were material to the
10 grand jury's inquiry. Hence you need not concern your-
11 selves with the first and the fourth elements, but you
12 must concern yourselves with the second and third elements.

13 With regard to the second element you must
14 determine whether any part of the testimony of the de-
15 fendant quoted in the indictment was false. The Govern-
16 ment must establish beyond a reasonable doubt that any
17 such quoted statement made by the defendant and which the
18 Government contends was false was in fact false. In other
19 words, the Government must establish what it maintains
20 the facts are. That is, it must establish what it claims
21 the truth is.

22 Now, when I say that the falsity of the defendant's
23 testimony must be established, I mean that the falsity
24 of the set of facts to which the defendant testified must
25 be established. The witness or witnesses whose testimony

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2 is offered to establish this alleged falsity need not,
3 and in most cases will not, know what the defendant's
4 testimony was or in fact whether or not the defendant tes-
5 tified at all.

6 Under the law, proof beyond a reasonable doubt
7 is necessary for conviction. The proof of the falsity
8 of the defendant's statements may be made by witnesses
9 or by documentary evidence. Thus, the testimony of one
10 witness, if believed by you, is sufficient to convict
11 the defendant of making false declarations, provided the
12 other elements that I have discussed with you have also
13 been proven beyond a reasonable doubt.

14 The requirement of falsity is met as to the
15 perjury charge here if the Government proves beyond a
16 reasonable doubt the falsity of any one of the claims of
17 falsity charged. By this I mean it is enough if the
18 Government shows that some testimony quoted in the perjury
19 count in the indictment is false.

20 The perjury charge in the indictment contains
21 answers given by the defendant which recite more than
22 one fact. It is not necessary that the Government prove
23 that each of these factual statements is false. It is
24 sufficient if the Government proves beyond a reasonable
25 doubt that at least one factual statement is false,

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2 in order to meet the requirement of falsity.

3 However, if the Government has met this burden,
4 you must also determine, before you may convict the
5 defendant on the perjury count, that the Government has
6 established beyond a reasonable doubt that the defendant
7 gave such false testimony knowingly and wilfully. In
8 connection with these charges the word "knowingly" means
9 that the defendant, aware of the true facts, made the
10 false statement with the knowledge that the statement
11 was false, that she consciously intended to make a false
12 statement and did so. "Wilfully" means that the defendant
13 acted deliberately, intentionally and purposely and did
14 not act as a result of inadvertence, negligence, mistake,
15 confusion or misunderstanding.

16 Thus, if there were false statements and they
17 were the result of an honest mistake or due to confusion
18 or faulty memory or faulty recollection or to a misunder-
19 standing of the questions or their import, these circum-
20 stances would negative wilfulness. But if at the time
21 the defendant testified before the Grand Jury she was
22 aware that she was making a false statement, and if she
23 intended to make a statement which was false at the time
24 that she made it, then she acted wilfully, as that term
25 is used in the statute.

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Wilfulness involves the state of a person's mind, the intent and the purpose with which he or she acts. Knowing involves what in fact was known. These are issues of fact for the jury.

The state of a person's mind may be inferred from what a person says or does. A person's words, actions, conduct and surrounding circumstances may permit an inference of a person's state of mind. Generally the proof offered is of objective facts and circumstances from which one, in terms of common experience, can rationally and logically conclude the ultimate fact, whatever you determine it to be.

Now, this completes my instruction to you with respect to the elements which you must find that the Government has proved beyond a reasonable doubt before you may convict the defendant on any of the counts with which she is charged. I remind you that as to any one count, if you find that the Government has not proved each of the elements I have described beyond a reasonable doubt, then it is your duty to acquit as to that count. On the other hand, if you find that with respect to any count the Government has proved each of the required elements beyond a reasonable doubt, then it is your duty to convict the defendant as to the crime charged in that

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2 count.

3 I have described the charges contained in each
4 of the six counts in the indictment against the defendant
5 and I have outlined the essential elements of those counts.
6 You should note that a separate crime or offense is charged
7 in each count of the indictment. Each charge against the
8 defendant and the evidence pertaining to it should be
9 considered separately. The fact that you find the defendant
10 guilty or not guilty as to one of the offenses charged
11 should not control your verdict as to the other offenses
12 charged.

13 Also you are not to consider in any way or
14 speculate about the sentence which the defendant may re-
15 ceive if found guilty. It is the function of the jury
16 to deliberate and determine whether a defendant is guilty
17 or not guilty on the basis of the evidence and the instruc-
18 tions of the Court, and it is the function of the Judge
19 to determine the disposition of the defendant's case
20 thereafter.

21 So now we get to the most important part of the
22 case, which is the part which you, as jurors, are about
23 to play, because it is you who will have to decide whether
24 the defendant is guilty or not guilty of the charges asserted
25 here in the indictment.

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2 I know you will try the issues that have been
3 presented to you in accordance with your oath, and in that
4 oath you will recall that you promised that you would
5 well and truly try the issues joined in this case and
6 a true verdict render. If you follow that oath and try
7 the issues without confusing your thinking with emotions,
8 you will arrive at a just verdict.

9 As you deliberate, please be careful to listen
10 to the opinions of other jurors as well as to ask for
11 an opportunity to express your own views. No one juror
12 holds the center of the stage in the jury room and no one
13 juror controls or monopolizes deliberations. You must
14 all express your views and exchange views. And if you
15 become convinced that your original view was wrong with
16 respect to any matter, don't be afraid to change your
17 vote because of pride in your original opinion or in
18 reaction to the stubbornness of another person. On the
19 other hand, do not surrender your honest belief solely
20 because of the opinion of your fellow jurors or because
21 you are outnumbered.

22 You understand, of course, that in a criminal
23 case in this court your verdict on each count must be
24 unanimous. That is, it must be joined in by each and every
25 one of you.

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2 The form of the verdict will be either guilty
3 or not guilty on each count of the indictment. During
4 your deliberations you may send for any exhibits in
5 evidence that you desire to have or to review. You may
6 request that any testimony be read back to you. If
7 you ask for testimony, it will be most helpful if you
8 can be as specific as possible as to what testimony it is
9 that you wish to have.

10 You may request that any portion of this charge
11 be read back to you. All of your requests must be in
12 writing.

13 Finally, you are instructed that you must not
14 reveal the standing of the jurors at any time during your
15 deliberations. That is, you are not to indicate the
16 split of any vote on any count for any verdict to any one,
17 including the Court.

18 All right, Mr. Foreman, I want you to take the
19 jury into the jury room for a few moments. Do not begin
20 to deliberate yet. I will call you back in shortly.
21 When you come back in, if the alternates have any garments
22 you should bring them out with you.

23 Would you lead the jury out, please.

24 [The jury left the courtroom.]

25 THE COURT: All right, counsel, I will take

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2 In discussing Count Five, the fictitious name
3 count, I read to you what the Government's contention was
4 with respect to my instruction to you as to the second
5 element. I told you that there were two essential elements.
6 I am going to go back and read just a few lines of that
7 and then add a new piece to it.

8 The second element was that the defendant used
9 or aided and abetted Michael Gardner in the use of one or
10 more of these names or titles for the purpose of conducting,
11 promoting or carrying on by use of the mails any mail
12 fraud scheme or any other unlawful business set forth in
13 the indictment.

14 For example, the Government contends that Miss
15 Braunig, with Gardner's help, falsely posed at various
16 times as Gardner's secretary, his assistant, and his wife,
17 and that using the name of Mrs. Gardner she was able to
18 give an appearance of substance and respectability that
19 enabled her to open numerous credit accounts on which she
20 thereafter defaulted.

21 I now add this to that instruction: With regard
22 to this count, the defendant admits using these various
23 names and titles but denies that they were used for
24 fraudulent purposes.

25 Now I have one brief new and additional instruc-

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2 tion. You will recall that certain evidence in the case
3 was received only for a limited or specific purpose, such
4 as bearing upon the state of mind of the defendant or of
5 a witness, and was not received for the truth of the
6 contents of the testimony or the exhibit.

7 I ask you to keep the limitations in mind which
8 I previously gave to you. The limitation speaks for itself.
9 If something is not received for the truth or falsity of
10 that which is asserted, then you cannot consider it for
11 the truth or falsity of what was asserted but you may con-
12 sider it, if it was received during the trial, as bearing
13 upon one's state of mind, to the extent that you choose
14 to consider it in that limited fashion.

15 Now, Mr. Foreman, I hand you a copy of the
16 indictment. Remember, ladies and gentlemen, that that
17 indictment is not evidence.

18 The Marshal will be sworn.

19 [A United States Marshal was sworn.]

20 THE COURT: I want the alternates to remain in
21 the courtroom. I want the jury to follow the marshal.

22 And now it is my instruction, direction to you
23 that you talk about the case and deliberate, and you can
24 commence that now.

25 One other thing. Do not talk about the case

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA :

- v - :

76 Cr. 21

SUSAN M. BRAUNIG, :

Defendant. :

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LAWRENCE W. PIERCE, D.J.

MEMORANDUM OPINION

On September 8, 1976, this Court denied the
defendant's motion to suppress certain evidence, and stated

that this opinion would follow. This memorandum sets forth the Court's rationale underlying the order of September 8, 1976.

Defendant Braunig moves pursuant to Rule 12(b)(3) and Rule 41 Fed.R.Cr.P. for an order suppressing certain evidence obtained from Apartment 10-A, 530 East 72nd Street, in the City of New York. The facts underlying the search and seizure are not in dispute and the items obtained by the Government, with the exception of a diary also obtained, were identified in a listing marked Court's Exhibit 1 at a conference held September 7, 1976. The facts may be stated as follows:

In March 1974, defendant and one Michael Gardner, a co-defendant in this action, sublet the apartment in question from Ms. Kathleen Flanagan, owner and landlady. In the course of the Government's investigation of this matter, a Special Agent of the Federal Bureau of Investigation (FBI) learned of Ms. Flanagan and had a number of conversations with her in 1975 and 1976.

By May of 1975, Michael Gardner had been imprisoned on certain federal sentences. In March 1976, Ms. Flanagan commenced eviction proceedings against the defendant and Gardner for non-payment of rent. However, this proceeding was terminated when, on March 10, 1976, defendant tendered

payment of back rent due. However, by March 12, 1976, defendant Braunig had been arrested in Montreal, Canada, for certain alleged crimes committed in that city and outside the bail limits set for her by this Court on the instant indictment. While defendant was in Canadian custody, and following the issuance by this Court of a bench warrant for the defendant's arrest following her failure to appear on the scheduled trial date, the rent for the apartment again fell into arrears. On April 20, 1976, Ms. Flanagan again commenced eviction proceedings against the defendant and Gardner in the Civil Court of the City of New York. Service of process in this civil proceeding was effected pursuant to N.Y. R.P.A.P.L. §735 ("nail and mail"). On May 7, 1976, the defendants having defaulted, the Civil Court entered a final judgment of eviction in favor of Ms. Flanagan.

The Government, and specifically the FBI, subsequently was informed by Ms. Flanagan that she intended to take possession of the premises. On May 25, 1976, while the jury was deliberating in the case of United States v. Michael Gardner, Ms. Flanagan, accompanied by a City Marshal and an FBI agent, executed the judgment of eviction and retook possession of the apartment. Thereupon, Ms. Flanagan consented to a search of the apartment by the FBI. As a

result of the search, the FBI agent took possession of several hundred documents and other items. Following the FBI search, Ms. Flanagan came upon the defendant's diary, and delivered that item to FBI headquarters. The items were then delivered into the custody of the prosecutor. There is no dispute that no search warrant was ever obtained in connection with the search and seizure.

The parties have agreed, and it is clear to the Court, that under the landlord and tenant law of the State of New York, defendant had a continuing property interest in the items of personalty seized from the apartment, despite her eviction from the premises pursuant to court order. However, the crucial question on this motion is whether, under federal law, the defendant maintained a reasonable expectation of privacy in the items seized. See United States v. Miller, 44 U.S.L.W. 4528, 4530 (April 21, 1976). Indeed, the Supreme Court has "increasingly discarded fictional and procedural barriers rested upon property concepts" in this area of the law, see Warden v. Hayden, 387 U.S. 294, 304 (1967), and has upheld searches under the "reasonable expectation" standard upon a finding of a narrower range of protection than would be afforded under state law. See United States v. Miller, supra, at 4533

(Brennan, J. dissenting).

The initial point raised by defendant is that the Government should have sought a search warrant. Certainly there was no reason to believe that the items would disappear or be destroyed--one of the tenants was in federal custody and the other was in Canadian custody. This Court had just charged the jury in the Gardner case and could easily have entertained an application for a search warrant. Indeed, it is primarily the role of the courts, rather than of law enforcement officers, to determine where and when the right of privacy should yield to the need for a search. See Johnson v. United States, 333 U.S. 10, 14 (1948). However, it is the Government's contention that the search was conducted pursuant to valid consent, and that under the circumstances the defendant had no reasonable expectation of privacy in the premises. Having considered the matter, the Court is constrained to agree. It would not have been reasonable for the defendant, incarcerated in Canada, to expect that the items in her apartment would remain private where the rent had fallen in arrears and where the landlady had obtained a lawful order of eviction following lawful notice to the tenant.

A series of cases have upheld searches made of hotel rooms shortly after the expiration of the rental period. See United States v. Perizo, 514 F.2d 52 (2d Cir. 1975); United States v. Croft, 429 F.2d 884, 887 (10th Cir. 1970) (search lawful even though the prior arrest of defendant prevented him from extending the rental period); United States v. Cowan, 396 F.2d 83 (2d Cir. 1968) (no reasonable expectation where items were being held by inkeeper pursuant to a statutory lien for unpaid rent); United States v. Lewis, 400 F.Supp. 1046 (S.D.N.Y. 1975). Further, an earlier decision of the Circuit Court appears to have proceeded on the assumption that a search of an apartment conducted with the landlord's consent following a lawful eviction would be a lawful search. See United States v. Paroutian, 229 F.2d 486, 488 (2d Cir. 1962).

The thrust of the above cases makes clear the appropriate decision here. As was the case in these decisions, here the rental period had expired and the lessor had taken the appropriate legal steps to regain exclusive possession. Once that had been accomplished, the lessor consented to a search of premises. The leasehold had expired, and the items of personalty could be properly removed to make way for a new tenant. In fact, since Ms. Flanagan knew of the ongoing FBI

investigation, it was her right, if not her duty, to inform the authorities and to invite them to enter the premises. See United States v. Cowan, supra, 396 F.2d at 87. The landlady's entry following a lawful eviction order, and the subsequent consent search, must be found to have been lawful. See United States v. Roberts, 465 F.2d 1373, 1374-75 (6th Cir. 1972). The search is not made unlawful because the defendant's conduct leading to her arrest in Montreal prevented her from returning to New York for the purpose of renewing the lease or taking custody of her personalty. Where a defendant has been arrested and is therefore prevented from taking new steps to insure the privacy of a leasehold, the Courts nevertheless have held that no reasonable expectation of privacy is present. See United States v. Croft, supra, 429 F.2d at 887; United States v. Lewis, supra, 400 F.Supp. at 1049.

In the face of this substantial body of Circuit Court precedent, the one district court decision cited by the defendant is not persuasive. Further, in that decision, United States v. Botelho, 360 F.Supp. 620 (D. Hawaii 1973), the court determined that the defendant had standing to contest a search made of an apartment after the end of the rental period where the defendant was still living in the

cottage; in fact, the defendant continued to live in the apartment for weeks following the initial search. Botelho is further distinguishable from the case at bar since in that case there was no order of eviction issued by any state court, nor was there even written notice to the tenant of the eviction. In fact, the court in that case found that the defendant's occupancy of the premises on the date of the search was fully lawful under state law. See Id., 360 F.Supp. at 625. In the instant case it is clear that the landlady, not the tenant, was in lawful possession of the premises at the time of the search. Accordingly, even were this Court to choose to adopt the reasoning of the Botelho case, the facts are so different here that the outcome of this motion would remain the same.

Finally, defendant argues that she had a higher reasonable expectation of privacy in the items in question since they were not contraband, but rather personal letters, documents, and a diary. The Court rejects this argument; there is no special sanctity in personal papers such as to render them immune from search and seizure. See Andersen v. Maryland, 44 U.S.L.W. 5125 (U.S. June 29, 1976).

In sum, the Court concludes that the defendant, sitting in a Canadian jail and having just recently staved

off the first eviction proceeding, could not reasonably have expected that the items seized would have remained private under the circumstances. The landlady had a lawful right to full and exclusive possession of the premises, and therefore the right to consent to a search.

Nor does it make any difference that the landlady delivered the diary to the FBI at a time subsequent to the FBI search. In both instances, the landlady had an exclusive right to the premises and the defendant's reasonable expectation of privacy had expired with the termination of the rental period and the entry of the final judgment of eviction.

Accordingly, although it remains the Court's view that the Government would have been better advised to seek a search warrant in this case, the Court concludes that under the governing principles, the search and seizure was in all respects lawful. Defendant's motion is therefore denied.

SO ORDERED.

Dated: New York, New York
September 13, 1976

LAWRENCE J. PIERCE
U. S. D. J.

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2 (Court called)

3 THE COURT: The defendant is present.

4 Now, we have a motion by Mr. Ellis.

5 Do you intend to respond, Mr. Kaplan, in
6 writing?

7 MR. KAPLAN: Your Honor, the motion is return-
8 able on Saturday, as you will notice. I am prepared to
9 respond right now, if your Honor would like. I checked
10 the law out and I can do it orally, if that is your Honor's
11 preference.

12 THE COURT: Why don't you respond at this
13 time and let's see where matters are.

14 MR. KAPLAN: Fine.

15 The first thing with regard to this motion is
16 I have to point out two errors in Mr. Ellis' affidavit.
17 The first is that the landlady's name is Kathleen Flannigan,
18 instead of Kathrine.

19 The much more serious error is that he mentions
20 the apartment at 321 East 69th Street in Manhattan. Miss
21 Braunig and Mr. Gardner have not lived at that address since
22 at least 1974. Miss Flannigan is the landlady of Apartment
23 10-A at 530 East 72nd Street in Manhattan. That is the
24 apartment from which the items were secured and not 321
25 East 69th Street, so I will accept Mr. Ellis' affidavit

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2 as amended to that extent.

3 MR. ELLIS: I didn't have access to Miss
4 Braunig at the time I prepared this. I went through the
5 record and the only address I could give is the one I
6 gave. I stand corrected, however, as Mr. Kaplan has
7 indicated, and would your Honor deem that I meant the
8 apartment she was living at at the time.

9 THE COURT: Yes. If there is no objection,
10 you can make a marginal correction when we finish here.

11 MR. KAPLAN: Assuming arguendo the facts
12 that Mr. Ellis has set forth in the affidavit, the govern-
13 ment sees no basis for the suppression of the items
14 seized, if you want to call it a seizure.

15 First of all, let me say that the items have
16 been inventoried and if your Honor wants to see an inventory
17 of the items taken, I have it available at the present
18 time. I indicated that to Mr. Ellis last week and I could
19 give it to your Honor for inspection.

20 I would point out that the diary mentioned in
21 Paragraph 6 of Mr. Ellis' affidavit was taken by Miss
22 Flannigan and given to agents of the FBI several days
23 after the time that Agent Meyers visited the apartment.
24 The other items which Mr. Ellis mentioned and the items
25 which are more fully described in the inventory which I

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2 have prepared were secured by Agent Meyers when he visited
3 the apartment on either the 25th or the 26th of May, 1976

4 The facts which led up to this are not terribly
5 complex. Very briefly, back in 1974, Mr. Gardner and Miss
6 Braunig entered into a lease agreement with Miss Flannigan
7 for the apartment at 530 East 72nd Street using the names
8 Mr. and Mrs. Gardner. I have a copy of the lease agreement
9 if your Honor wishes to see it.

10 Thereafter, during the course of the investiga-
11 tion of this case, Agent Meyers got into contact with
12 Mrs. Flannigan and there were numerous telephone conversa-
13 tions in 1975 and early 1976.

14 In March of 1976, Miss Flannigan commenced
15 an eviction proceeding against the Gardners, as they were
16 called in the lease. This eviction proceeding was staved
17 off, if I might use that term, when on March 10th Miss
18 Braunig tendered to Miss Flannigan a number of checks,
19 bank checks which had been secured by Miss Braunig up in
20 Canada as product of the fraud, the Canadian check fraud.

21 At that point Miss Flannigan endorsed on the
22 back of the eviction notice that she had received the rent
23 which was in arrears and would not evict. Mr. Gardner of
24 course throughout this was in Federal custody.

25 Thereafter, Miss Braunig went up to Canada

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2 and in early March, I forget the exact date and I think
3 it is the 12th, she was arrested and she was held in
4 custody in Canada.

5 The rent for the apartment then fell into
6 arrears once again.

7 On April 20th, Miss Flannigan again commenced
8 an eviction proceeding in the Civil Court of the City of
9 New York.

10 Service of the petition was effected by mail
11 and mail service since neither Mr. Gardner nor Miss Braunig
12 were available at the apartment. And of course mail to
13 mail service has been upheld in the Second Circuit in a
14 case called Velasquez against Thompson, found at 451 Fed.
15 2d 202.

16 Thereafter, the Gardners defaulted in respond-
17 ing to the eviction proceeding and on May 7th a final
18 judgment of possession in favor of Miss Flannigan was
19 entered by the Civil Court.

20 Now, once Miss Flannigan secured the premises
21 pursuant to a judgment, she, together with the City Marshal,
22 went to those premises. In advance of her doing so, she
23 called Special Agent Meyers who I indicated earlier she
24 knew from previous conversations with him and asked him
25 if he wanted to join her at the apartment and to look at

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2 the items which were contained before she gave them to the
3 marshall pursuant to the eviction notice.

4 Then, and I am not sure of the date, either
5 May 25th or 26th but I remember it was after your Honor
6 had charged the jury in the Gardner case and the jury was
7 deliberating, Agent Meyers met with Miss Flannigan and
8 the City Marshal at Miss Flannigan's apartment.

9 When they arrived at the apartment, Miss
10 Flannigan consented to Mr. Meyers searching the apartment
11 or looking over the documents and papers contained in the
12 apartment and thereafter consented to Mr. Meyers removing
13 certain of the items which were contained in the apartment.

14 Now, based on those facts, the government would
15 contend there is absolutely no validity basis for the
16 suppression of the items which have come into the govern-
17 ment's custody.

18 First, I would like to point out that Mr.
19 Ellis has correctly stated the law of New York vis-a-vis
20 landlord and tenant relationships. I looked at Professor
21 Rash's textbook on landlord and tenant the other night
22 and the cases cited by Mr. Ellis seem accurate, that Miss
23 Braunig retained a possessory interest in the apartment,
24 notwithstanding the fact that a lawful eviction order
25 had been entered.

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2 have known or reasonably should have known that had her
3 rent fallen into arrears, a similar course of action would
4 again be adopted by the landlord.

5 Once the eviction took place and Miss Flannigan
6 again re-entered the apartment, Miss Braunig's reasonable
7 expectation of privacy vanished and, as I said, there are
8 a number of cases which address this issue. Indeed, there
9 are cases which address the issue in terms exactly of what
10 we have here, namely, the fact that the defendant seeking
11 suppression of the evidence was in jail at the time and
12 could not return to resecure the property.

13 One of the cases is United States v. Parizo
14 which I mentioned earlier. That was a seizure of certain
15 property which had been left by a defendant in a hotel or
16 a motel room and he then disappeared and the Court, the
17 Second Circuit said, when the rental period expired, the
18 defendant as a prior guest had completely lost the right
19 to use the room and any privacy associated with it. Since
20 the defendant had no right to privacy, he suffered no
21 invasion of that right by the innkeeper's search and
22 discovery of a weapon which was contained in it.

23 Then the Court goes on --

24 THE COURT: Let me interrupt.

25 Mr. Ellis, what do you have to say about all

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2 this? Mr. Kaplan makes a very telling point when he cites
3 these cases, Parizo and Cowan, and takes the position that
4 once there is reason to conclude that there was a lawful
5 eviction, your client had no remaining expectation of
6 privacy with respect to the items seized by the law enforce-
7 ment officers and there was consequently in no way a
8 violation of her Fourth Amendment rights.

9 One is hard pressed to see how, once there is
10 an eviction of the owner of property which results from
11 a lawful eviction, results in removal from the premises
12 by virtue of a lawful eviction, can protest that the
13 material comes in the hands of anyone unless there is some
14 sort of a claim asserted against the former landlady by
15 virtue of some obligation imposed upon her to take some
16 reasonable steps pursuant to the local ordinance or the
17 state law to protect the privacy. I know there used to
18 be a Bureau of Encumberancy, and if a person was evicted,
19 the landlord was required to call the Bureau of Encumberancy
20 and attempt to have them pick up the proper and take it
21 and warehouse it and hold it for a period of time where
22 it could be claimed by the owner.

23 But do you want to speak to some of these points
24 and give me your view?

25 MR. ELLIS: Your Honor, I could just start

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2 MR. ELLIS: In a warehouse.

3 THE COURT: For a period of time.

4 MR. ELLIS: Your Honor, may I press this a
5 bit further? If I may -- her second obligation, was to
6 say to the government, what legal right do you have and
7 what right can you show me from the federal court to go
8 into what is still under the law of the State of New York
9 the property of these two persons who, due to no circumstances
10 circumstances that they could not foresee, are suddenly
11 unable to be present but whose reasonable right of expecta-
12 tion in an apartment where everything that they owned is
13 to be found did not end or terminate just because of a
14 notice of eviction.

15 Now, the second part of the question is, the
16 government at this point had an obligation, and I suggest
17 to you -- a fairly serious obligation, to come before this
18 Court and it had sufficient time to do this -- there could
19 be no arrest, there could be no consent but there could
20 have been a search warrant and at that point the question
21 could have been raised and the issues could have been
22 raised before this Court and this Court then could have
23 determined it.

24 THE COURT: Let's assume that is quite so.
25 The mere fact that one, that is a law enforcement officer

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2 under certain circumstances can come to a federal court
3 and get a search warrant I do not believe you would contend
4 means that the law enforcement officer must therefore
5 always come in such situations. Many times it is a
6 gratuitous act I dare say when they get a search warrant.
7 The fact that it is available or could have been obtained
8 does not really address the question of did the officer
9 have to do it in this case.

10 MR. ELLIS: But your Honor, how you answer
11 that question, it seems to me, determines the kind of
12 public policy that the Court is willing to establish in
13 this kind of a situation as to the reasonable right of
14 expectation that a citizen should be able to expect under
15 these circumstances.

16 It seems to me, your Honor, that -- may I
17 suggest that if the Court places great value in a situation
18 where two tenants have been evicted and cannot possibly
19 be there but would never have consented to have their most
20 private documents, such as diaries, be taken by anyone,
21 if the Court places high value upon the right of expecta-
22 tion such as you defined it in that kind of situation,
23 then it seems to me that the Court will say in protection
24 of that right of privacy and that reasonable expectation
25 of privacy which continues beyond the eviction, we will

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2 impose upon the government the burden of coming before this
3 Court and indicating that there is good, probable cause
4 and reason for it to be able to seize this.

5 Now, may I suggest to you, your Honor, that
6 if on the grounds of public policy the Court were to say
7 that we do not recognize that there is any right of privacy
8 in this kind of situation, then I suspect that the
9 Court would rule there is no obligation on the part of the
10 government to come before this Court but what I am suggest-
11 ing to the Court is that given the factual situation that
12 is here, given the expectations of privacy that continued
13 beyond the eviction, that there were two duties that
14 were imposed upon the two principal parties. One duty
15 was to the landlord to see that she followed the law and
16 did not make herself liable for an action of conversion.
17 She is now in my opinion.

18 And the second was for the government to take
19 reasonable steps to be sure that it had a legal right to
20 take this property as it did and that was a very simple
21 thing, simply to fill out an affidavit, ask for a
22 search warrant and come before this Court and I would like
23 to suggest to the Court, your Honor, that the right of
24 privacy involved is such that this Court ought to impose
25 that kind of a duty upon the government.

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2 business first?

3 MR. KAPLAN: Yes, your Honor. The State Bank
4 of Albany scheme basically runs in the following fashion:

5 Two checks we will offer into evidence were
6 forged and falsely certified and given to a fellow by
7 the name of Ralph Waldo Flanders, who is one of Mr.
8 Gardner's cronies, for want of a better word, and they
9 were then cashed, and Mr. Gardner shared in the proceeds
10 of those two checks, the proceeds derived from the
11 cashing of those two checks.

12 During the search of the apartment, one of the
13 items which were seized --

14 THE COURT: How do we know they were forged?

15 MR. KAPLAN: Your Honor, the individual at
16 the State Bank of Albany will testify that the signatures
17 on the checks are not the signature of the co-holder and
18 will also testify that the certification stamp is a
19 falsity.

20 Also, your HONOR, during the trial of Ralph
21 Waldo Flanders Mr. Gardner testified as a witness and
22 admitted from the witness stand under oath that he had
23 forged two checks and given them to Mr. Flanders and
24 shared in the proceeds. That is indicated in a letter
25 which your Honor has from Mr. Cameron which Mr.

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2 Gardner submitted as part of his sentencing memo. Mr.
3 Cameron was the Assistant in Los Angeles who prosecuted
4 that case and the letter recounts that Mr. Gardner stated
5 that he had given these forged checks to Mr. Gardner,
6 that they were falsely certified, that they had been cashed
7 and that Mr. Gardner derived the benefits of it.

8 During the search of the apartment, Miss
9 Brauning's and Mr. Gardner's apartment, the false
10 certification stamp and the check on which those certi-
11 fied checks were drawn were found, and from that the
12 Government would argue to the jury that Miss Brauning
13 certainly had knowledge of the entire scheme. She had
14 the items in her possession for at least a year after Mr.
15 Gardner became incarcerated.

16 THE COURT: Do you want to be heard on that?

17 MR. JACOBS. Surely, your Honor. Let's talk
18 about the second part of it.

19 This was an apartment, I understand, shared
20 jointly by them. Mr. Gardner goes to jail. Are we
21 to assume that Miss Braunig, when Mr. Gardner goes to
22 jail, goes through all of his materials and thereby
23 sees this? That is No. 1. That is the first hurdle.

24 The second hurdle is, even if she saw a stamp
25 from the bank, how does she know that that stamp had

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2 anything to do with any such scheme involving Mr.
3 Flanders? There is absolutely no proof, according to
4 the Government's offer of proof, connecting Miss Braunig
5 with the scheme. The only thing is, it was found in the
6 apartment which she shared with Mr. Gardner. It wasn't
7 her own apartment. It was an apartment she shared with
8 Gardner.

9 Does that mean that any illicit operation
10 Mr. Gardner was in, no matter when it was, and we haven't
11 fixed a date on this either, no matter when it was, Miss
12 Braunig automatically becomes a party to because it is
13 something of Gardner's that was found in the apartment?

14 THE COURT: Suppose there had been plates for
15 the making of counterfeit ten dollar bills?

16 MR. JACOBS: Even if that were so, your Honor,
17 all that would show was that Miss Braunig had knowledge
18 that Michael Gardner had plates. She wouldn't know
19 whether Michael Gardner ever used the plates. how he used
20 the plates, or what.

21 The Government is asking for a specific
22 transaction. They are saying that there was a specific
23 transaction, two checks were forged. There is nothing to
24 connect Miss Braunig with that transaction.

25 THE COURT: I am not in agreement with you.

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2 Miss Braunig didn't just share the apartment jointly.
3 She really represented herself as Mrs. Gardner, and
4 in effect one may assume she acted as though it was and
5 held out that it was a spousal situation.

6 And, further, there is no question about the
7 fact that during the period prior to the discussion of
8 the eviction order the entire premises were occupied
9 by Miss Braunig and by Mr. Gardner as tenants. And if
10 the Government is in a position to show that the stamp is
11 indeed the stamp that appeared on those checks, given
12 the cold context of all of these matters allegedly here,
13 I believe that they are in a position to present that
14 evidence for such inferences as the jury might choose to
15 draw from it, if they believe and accept it.

16 MR. JACOBS: I think in my own marital situation,
17 my wife has papers in my house that I have no knowledge
18 of, your Honor, and to say that I would be bound by any
19 papers of my wife's, or that she would be bound by papers
20 in my possession in the house, when we live in the
21 house jointly, I find fairly shocking.

22 THE COURT: First of all, if your wife served
23 as your secretary over a period of years, as Miss Braunig
24 served as Gardner's secretary, and if your wife travelled
25 with you as you went about from place to place doing

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2 business on behalf of your client and was in effect part
3 and parcel of your business efforts in some significant
4 way, and if during this period of time you were under
5 indictment and your wife was under indictment also for a
6 variety of charges which had to do with money matters of
7 this nature, I think a reasonable person could be
8 expected to wonder what a bank certification was doing in
9 one's household.

10 MR. JACOBS: Can we fix the time of these
11 checks?

12 THE COURT: I think that is a good point.

13 MR. KAPLAN: August 21, I think the checks
14 are, August 1973.

15 MR. JACOBS: Which is fairly early in the
16 relationship, your Honor.

17 THE COURT: August of '73.

18 MR. JACOBS: Most of the transactions involved
19 in this case, your Honor, are in late '74 and in '73, and
20 we are talking about something now in '73.

21 THE COURT: And there certainly had been no
22 indictments in this action yet.

23 MR. JACOBS: No, no indictments in this case
24 until '75.

25 THE COURT: When does the evidence suggest that

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Miss Braunig began working for Mr. Gardner as a secretary?

MR. KAPLAN: September 1972. Miss Braunig's own admission states that she met Mr. Gardner in September 1972.

THE COURT: And was there a period of time when Miss Braunig lived alone in the apartment?

MR. KAPLAN: Not in that apartment, your Honor. Miss Braunig and Mr. Gardner first lived together at 321 East 69th Street. They subsequently, I think it was in the Spring of '74, moved to 530 East 72nd Street. And then, from May of last year until she was arrested in Canada, she resided in the apartment alone.

MR. JACOBS: I think the record ought to reflect also where the material was found in the apartment. I think that might bear a relationship on whether she had knowledge of it.

MR. KAPLAN: The answer to that question I can't give the Court at this time. I would have to ask Agent Myers.

MR. JACOBS: If it was found in a shopping wagon in a closet along with some sheets or something, I think it would be less likely she went rumaging through all that stuff. If it was found in some obvious place, that would be another situation.

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2 No. 1, we are imputing knowledge on her that
3 it was in the apartment and, No. 2, we are going further
4 from that and saying that when she saw this, all the worst
5 could be that she knew Mr. Gardner was involved with a
6 forgery or co-suspect that Mr. Gardner was involved in it.

7 How could we say that finding something in
8 1976 in an apartment connects her with something three
9 years before that indictment^{THE COURT} if it is really that compelling,
10 I dare say the jury would have accepted your persuasive
11 argument.

12 MR. JACOBS: It is difficult enough to face
13 the charges in the indictment in this case, your Honor.

14 THE COURT: But that is not the standard.

15 MR. JACOBS: I know it is not the standard. But
16 I think a similar action a lot closer in time and there
17 should be a lot more compelling proof connecting the
18 person. What the Government has shown here is a similar
19 act of Michael Gardner and they are asking your Honor
20 to say Susan Braunig was a partner in that, and I don't
21 think there is an iota of proof to show that she was
22 a partner in that transaction.

23 MR. KAPLAN: First of all, we would submit
24 that at the time that those two checks were forged Miss
25 Braunig was indeed Mr. Gardner's partner. Miss Braunig's

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own admissions, as contained in her memoranda to Mr. Gardner, say exactly that so I would say, one, that she was his partner at that point in time .

Beyond that, the handwriting expert has looked at these checks. At this point the handwriting expert, because of the scribbling on the checks she can't make out who signed them. It is possible that Miss Braunig signed them. I don't know.

But we know that she was his partner. She admitted that herself. We know that when Mr. Gardner testified in September of '74 that he had forged these checks, Miss Braunig was very actively engaged with him at his enterprises, and I think all of that, plus the fact that the false certification stamp and the checks were found in the apartment where she had been living alone for a year, allow the Government to present this evidence for whatever inferences the jury might want to draw.

THE COURT: All right. I will make this ruling for the timebeing.

You may inform the jury in your opening, if you wish, that subject to rulings to be made by the Court, among the evidence you expect to present will be evidence which you on behalf of the Government suggest are

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in the nature of prior similar acts, however you wish to develop that, without referring specifically to the particulars of this alleged prior similar act.

While I reserve the right to have some second thoughts about the matter, I will allow the presentation of this evidence to the jury.

Now, let's move on to the Canadian check kiting scheme.

MR. KAPLAN: Your Honor, I think you are aware of the essence of that scheme. Basically what happened was Miss Brauni~~g~~ secured four checks from a bank in Vancouver, British Columbia, deposited them, \$7,500, apiece, I believe, deposited them in four banks in Toronto.

Then, using accounts which were opened in the name of Michael Gardner back in 1973, I believe, and six new accounts, she began moving deposits from one bank to the other bank and from Toronto to Montreal and then from bank to bank in Montreal as a result of which she was able to withdraw funds which she used for her own purposes. This was in March of this past year.

The Government's proof at this trial would be, as it has in the last trial, first of all the testimony of Detective Horvath relating to the seizure which he made.

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2 don't want to bring him down --

3 THE COURT: He's coming from the State Bank?

4 MR. KAPLAN: Yes, he's vice president of the
5 State Bank.

6 THE COURT: Is there not another way around
7 this in terms of comparison of the stamp found in the
8 apartment and a comparisor of the stamp imprint appearing
9 on the checks?

10 MR. KAPLAN: I would ask him to do that.

11 THE COURT: The FBI?

12 MR. KAPLAN: I don't know if the FBI can do
13 it, but the official from the State Bank of Albany could
14 find the stamp found in the apartment and the stamp on the
15 checks.

16 THE COURT: If that approach is used we will
17 have to use expert testimony. Where does that take
18 us, Mr. Jacobs?

19 MR. JACOBS: Can I go further? The letter
20 that the Government relies upon, this December 5th
21 letter and also the November 3rd letter about No. 1,
22 adjusting happily to a life of crime and being partners in
23 crime. Your Honor, if that is probative of the fact that
24 she was involved with Mr. Gardner, that would mean, I
25 submit, that any criminal activity that Mr. Gardner was

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acting in in that period, would be permitted into this case. Just by saying we are partners in crime, that means the Government could show --

THE COURT: There is an additional piecemeal. The stamp.

MR. JACOBS: The additional piece is the stamp. We have an apartment that they lived in jointly. The stamp was found in a desk. I don't know where in the desk it was found, whether it was found with numerous other things of Mr. Gardner's. Why should we go further and make assumptions, No. 1, that Miss Braunig knew it was in the apartment and No. 2, she knew what it was.

THE COURT: Those are proper questions that may be presented, that may be raised and may be argued, but on the offer of the evidence, I don't think that speaks very significantly to any issues which are presented here, Mr. Jacobs. If she was a lawful resident and an occupant of the apartment in question, this is not a case where the items seized were tucked away behind some old newspapers in an attic or a closet. I am not sure that it would make much difference, except as to ^{weight} ~~wait~~ considerations, if it were.

Here it is said that the testimony is going to be that the stamp was found in the desk. It may well

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2 be that Miss Braunig didn't know anything about that
3 stamp in that desk. But that's not for me to determine.
4 The jury will have to determine whether they believe that
5 she knew. My only concern here is whether the Government
6 has a valid evidentiary basis to have it received. I
7 see one problem and that is tying that stamp, if they
8 can, to the alleged forged checks.

9 MR. JACOBS: I don't know if your Honor is
10 aware of the fact that the Government attempted to
11 determine whether the forgery on the checks was Miss
12 Braunig's signature.

13 THE COURT: That's another approach that they
14 could try if they wanted to. I'm unconcerned about how
15 they do it.

16 MR. JACOBS: They were unsuccessful.

17 THE COURT: Well, they might have been. That's
18 not the only way they can proceed. They have simply
19 got to have a nexus between that stamp and those
20 forged checks.

21 MR. JACOBS: Let's assume Miss Braunig knew
22 about the stamps. All it would show is that she had
23 knowledge of the transaction. What iota of evidence
24 is there that she participated in the transaction?

25 MR. KAPLAN: We don't contend she participated.

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We contend that her knowledge is enough because she's
dealing with two forged checks in Counts 5 and 6.

[Continued on next page.]

9-17-76

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US
v
Braunig

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Bl
a.m.

THE COURT: They are offering this for the very limited purpose and it is the only purpose for which they can offer it of bearing on knowledge and intent and motive, which, as you know are key issues with respect to, I suppose, all of these counts before us here. I believe they are entitled to get it into evidence.

Now, I have not permitted it with respect to one. I told you previously I believe they are entitled to get this one, if they can make the case. What is still missing is the nexus between the stamp and the checks. I have no problem with it having been found in the desk drawer and the question of whether or not Miss Braunig knew or didn't know it was in the desk. The jury can make no judgments and you can cross-examine to a fare-thee-well about that, if you choose to. So, your burden right now remains the nexus between the stamp and those checks. Whether you do it through some expert comparison or whether you do it through some statement by Mr. Gardner, that is up to you.

MR. KAPLAN: Your Honor, isn't it enough that the stamp, if you put this stamp that we found on a piece of paper and we show the jury the check and let the jury make up their own mind.

THE COURT: It might. It depends if there are any distinctive markings. If there are no distinctive

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2 markings, that a lay person could detect, then I think the
3 answer is no.

4 MR. KAPLAN: The man from the State Bank of
5 Albany will testify that the certification stamp which
6 appears on the two checks was larger than their usual
7 certification stamp.

8 THE COURT: He is going to bring down some
9 stamped material which will make that point?

10 MR. KAPLAN: I will have him bring a certifica-
11 tion stamp with him from the bank.

12 THE COURT: I'm not going to instruct you on
13 how to try your case. I'm just trying to see what you will
14 have. The rule permits lay comparisons. But it will have
15 to be something that a lay person could compare or if it
16 is close, then they may have a problem.

17 If this is the kind of comparison which lay
18 people could make and draw some rational conclusion about,
19 then the rule speaks for itself in that regard.

20 MR. JACOBS: Your Honor, one question, and this
21 would be off the record. The grand jury stenographer is
22 here and I wanted to go over some of the minutes with her.
23 Can I find out when your Honor intends to adjourn for lunch
24 so I can do it at that time?

25 THE COURT: About 12:30, quarter of 1:00.

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US
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Braunig

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MR. JACOBS: Confidential files does not mean evidence, your Honor.

THE COURT: I don't wish to argue it. He is asking for a stipulation.

MR. JACOBS: I will not stipulate.

MR. KAPLAN: Will you stipulate that Miss Braunig was living in the apartment alone since May 16, 1975?

MR. JACOBS: Just a moment, your Honor.

THE COURT: All right, where are we now?

MR. JACOBS: Just two minutes, your Honor.

THE COURT: All right.

MR. JACOBS: Your Honor, I would stipulate that for the period of time the government requested - and we'll fix the exact dates - that Susan Braunig resided at the apartment alone.

THE COURT: That period being what?

MR. KAPLAN: May 16, 1975 until March 12, 1976.

THE COURT: And that is 530 East --

MR. KAPLAN: 530 East 72nd Street, apartment 10A.

THE COURT: Now, I have a matter to bring up:

I have received this morning an affidavit from Mr. Kaplan, which he requests to be sealed, and I am going to order that it be sealed, but it raises some questions as to whether or not certain material purports to be or falls

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2 within the doctrine of Brady vs. Maryland.

3 The Court believes that it does, and directs
4 that the government provide to the defendant the information
5 which is contained in paragraphs 4 and 5.

6 Now, further, that information should be dis-
7 closed before the end of today --

8 MR. KAPLAN: Yes, your Honor.

9 THE COURT: -- and, further, Mr. Jacobs is directed
10 to make inquiry of the Court coupled with an offer of proof
11 or, at least, an explanation of what it is about or tends
12 to be about in the event that, as the defendant's attorney,
13 he seeks to utilize this information in any way during the
14 cross-examination of the individual involved.

15 So, once again, in short, yes, the Court deems
16 it to be Brady material; it must be revealed today to the
17 defendant's attorney, and the defendant's attorney is not
18 to use the material on cross-examination without a prior
19 discussion with the Court which will be in the nature of
20 an offer of proof.

21 And, finally, the material is ordered sealed.

22 Now, are we ready to bring the jury out?

23 MR. KAPLAN: Your Honor, there is a written
24 stipulation that I think we should execute before the jury
25 comes in, if we could have a few moments to do that. It

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2 but the rebuttal, I think, 15 minutes should be enough.

3 MR. JACOBS: I would say, your Honor, an hour
4 to an hour and a quarter.

5 THE COURT: An hour to an hour and a quarter?

6 MR. JACOBS: Yes, your Honor.

7 THE COURT: All right. As soon as Mr. Vicarrondo
8 is ready you can let me know. If he is not here by 10:15
9 we are going to bring in the jury.

10 MR. KAPLAN: Yes.

11 Your Honor, I will use this time to provide
12 Mr. Jacobs with that Brady material.

13 THE COURT: All right.

14 (Recess)

15 (In the robing room.)

16 MR. JACOBS: Your Honor, I have just been shown
17 by Mr. Kaplan paragraphs 4 and 5 of an affidavit that was
18 submitted to your Honor, which affidavit, in substance,
19 states that Agent Myers of the FBI is subject to an investi-
20 gation by the Department of Justice Civil Rights Division,
21 an investigation with regard to break-ins conducted by the
22 FBI of certain individuals and political groups.

23 The information states that the government
24 learned of this early in the summer of --

25 MR. KAPLAN: No, that is not correct. Agent

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2 Myers learned or was told that he was the subject in the
3 early summer of 1976. I did not learn of it until I asked
4 Agent Myers about this, I guess, about a week before trial.
5 I had no knowledge of it at all until that point.

6 MR.JACOBS: He has been subpoenaed to testify.
7 The subpoena has been adjourned. He has retained counsel
8 and has been given transactional immunity.

9 Your Honor, it is my position, firstly that this
B2 10 information was material with regard to the search of
11 Mr. Gardner's office and the search of the apartment of
12 Mr. Gardner and Miss Braunig. This information was never
13 known to either predecessor counsel or myself until this
14 very moment.

15 The government, knowing full well of this --
16 first, of course, Mr. Kaplan said he didn't know until a
17 week before trial, but on the very day of trial, if I recall,
18 I was solicited to give my view as to whether it was neces-
19 sary to have a hearing with regard to the seizure of the
20 apartment, and based upon the facts as I knew them at that
21 time, I stated I didn't think it was necessary. Mr. Kaplan
22 at that time knew of this investigation, did not reveal
23 it to the Court, did not reveal it to me.

24 I will state candidly, your Honor, had I known
25 this at that time I would not have consented to the motion

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2 being decided solely upon affidavits in the light of Agent
3 Myers' background, and I would request and have requested
4 a hearing.

5 THE COURT: Now, given this situation and given
6 what you state would have been your decision at the time
7 the issue of hearing or no hearing arose, tell me what you
8 would have done with the information on the hearing?

9 MR. JACOBS: On the hearing?

10 THE COURT: On the hearing.

11 MR. JACOBS: On the hearing with regard to the
12 apartment, I would have questioned Agent Myers with regard
13 to whether he was ever at the apartment other than the time
14 that he says he was there with the consent of the landlady --

15 THE COURT: Doesn't that assume they would have
16 called him to take the stand?

17 Now, there is one pivotal person in this whole
18 business of the search of the apartment and the seizure of
19 items at the apartment, and that is the landlady.

20 Now, it is my assumption that there is no dis-
21 pute about the fact that there was a final order of eviction
22 which the landlady sought to execute, and that she went to
23 that apartment with the City Marshal, and, as I recall it,
24 she invited Agent Myers to join her there, and she took
25 possession of the apartment pursuant to the final judgment

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2 of eviction, and the agent was present at her invitation,
3 and that consequently any search which was undertaken was
4 a consent to search by the person lawfully entitled to
5 enter the premises.

6 Now, assuming that we had a hearing, and assum-
7 ing that Mrs. Flannigan was the sole witness called, and
8 that it was the testimony that in her presence certain items
9 were seized and taken from the apartment, and the government
10 closed its presentation of evidence on the hearing at that
11 point, where would we be?

12 The key witness on the whole thing is Mrs. Flannigan,
13 the landlady, and this, indeed, she gave consent to
14 the FBI to come into the premises, then I don't see that
15 it would change anything in terms of my ruling that the
16 seizure was lawful.

17 MR. JACOBS: What, your Honor, if it was estab-
18 lished that Agent Myers had prior to that date made an
19 illegal break-in into the apartment and had discovered this
20 evidence during an illegal break-in and had not seized it --

21 THE COURT: The difficulty is that that requires
22 us to assume the possibility of that having occurred.

23 Now, you raise that question based upon what
24 has been revealed to you by Mr. Kaplan at the Court's direc-
25 tion about Agent Myers being the subject of an inquiry along

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with the various other agents who were similarly the subject of an inquiry of late. I don't really know what that inquiry is all about other than from what I read in the newspapers, and if we accept what we read in the newspapers we can assume that it is predicated on some understanding by the Department of Justice officials that the agents, or some of them, were engaged in unlawful actions, including break-ins, with reference to an organization here in this locale.

But while that's a fair assumption of what that inquiry is all about, we would be required here to make the big leap from the assumption that that happened there, a reasonable assumption, to the assumption that it could have or might have happened here.

There isn't anything before me other than this "involvement" by Myers in the other inquiry to lay the basis for me to accept your statement of the possibility that there had been such a break-in.

Now, as I understand the cases here, Crisona I think it is, the Circuit requires more of a showing than that, Mr. Jacobs. It would be a very big leap to make that assumption. It may have happened, but I am not to make that leap, as I understand US vs. Crisona. How you would put me in the position to pursue your concern, I don't know.

MR. JACOBS: Well, your Honor, if Agent Myers

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2 was called as a witness either by the government or myself
3 at a hearing before your Honor, I would think I would be
4 certainly entitled, in light of his saying that he has
5 participated in break-ins, to ask him whether he broke into
6 this apartment.

7 MR. KAPLAN: I want to correct one thing --

8 MR. JACOBS: He is being investigated --

9 MR. KAPLAN: He is being investigated. I don't
10 know whether he participated or not. Our office, your Honor,
11 has been very cautious in this regard. We --

12 THE COURT: I'll tell you what. Let me resolve
13 this. I want an affidavit from Myers before tomorrow morn-
14 ing --

15 MR. KAPLAN: Yes, your Honor.

16 THE COURT: -- which explicitly states that he
17 did not enter that apartment at any prior occasion other than--

18 MR. KAPLAN: Other than for the purpose of look-
19 ing for evidence. It is not that he did not enter the
20 apartment; there are times he served subpoenas on Susan
21 Braunig, he may have gone to the apartment. He may have
22 been at the apartment building and spoke to the doorman.

23 THE COURT: Let him put the ifs, ands and buts
24 in, if there are any.

25 MR. JACOBS: Will your Honor include the office

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2 in that also?

3 THE COURT: No, I'm going to take this one at
4 a time.

5 Now, you give me an affidavit.

6 Now, obviously, if he cannot state that truth-
7 fully, I am not asking for an affidavit that he cannot
8 state truthfully. That goes without saying. So you furnish
9 me with an affidavit from Myers with a copy to Mr. Jacobs.

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13 (Continued on next page.)

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THE COURT: I should also indicate that in making my decision on the motion to suppress with reference to the apartment, I did not rely upon the Governments' contention that the agent, that is, Agent Myers, did not urge the landlady to let him in. It sufficed for my purposes to determine whether or not the agent's presence there was lawful and by consent of the person entitled to possession of the premises, and I predicated my decision on that.

So I am going to only modify matters in light of the position Mr. Jacobs understandably finds himself in at this point, by requiring the Government to submit an affidavit by Myers.

While I recognize that that does not give Mr. Jacobs a right of cross-examination, I wish to make clear that I do not believe that it was necessary to the decision I made, on the motion to suppress, to have any more before me than that which was presented in undisputed fashion as to the conduct of the landlay.

All right. Now, Mr. Jacobs has his exception, of course, to all this.

MR. KAPLAN: Your Honor, could I just state two things?

I think it is now clear, under the Supreme Court's decision in Agars, which was decided last

GX 531Michael-

I agree with the fact that its wonderful to be secure and to know your husband is there -- to take care of you, to fight off the outside world, to love you, to be responsible for you, to be brave and ferocious when you can't be, etc., etc., etc. -- but that is not enough to make it right.

Material things and reputations and tangible things can change and security has more to do with the emotional, mental, psychological make-up of the Partnership, rather than its assets or current liabilities or the deals its working on from moment to moment.

You have done me the supreme Honor of making me your true Partner in every sense of the word. This kind of respect and sharing may well be the greatest gift (outside of your love and your self) that you will ever give me. I value it, take great pride in it. Thank you for your faith in me.

I mean, Partners where we are both working together; doing what we can do best, to make the total Partnership a complete success. Remember how well we functioned with Dalton, et al and how we give parties, entertain socially together? How we have now become "Partners-in-Crime" and learned to enjoy it, and how we are functioning in the office together. I want to be aware of our problems; of how we are surviving; how much we really have; what you have to go through to make it; what our stresses from the outside are; how we are growing and changing; I don't want to be spared these things. Our sexual partnership grows more

and more every day and we are truly becoming friends now
and opening up emotionally to the point where it's impossible
to tell where one stops and the other begins. What I am
trying to say is that we are already married, already
Partners -- now and always.

I LOVE YOU

Susan Margaret Gardner

Michael.

My Love, it's going to be O.K. for us all to be there in court. From where I sit, I can see you very well, and I can't really see her, so I'm not that aware of her being there. As long as I avoid confrontations with her, get there just after you, and leave just before you, it will all go smoothly. I can handle anything that happens, because I do know that you love me. One suggestion, and it's not meant to be catty. She is wearing far too much make-up. She looks too pink - not the color of worry or depression. The women will notice it. Less rouge would look better.

I made the deposit. So there! ~~She~~ Snoke to Elizabeth. Brother is ~~is~~ puffed up with her own self-importance! She really needs a snuggle badly, she's so insecure. Well, anyway, by the end of the conversation, we were busom buddies, and she backed off. The rent goes to Quotomation.

I called National Quotation Bureau, and they're starting tonite and will do it as fast as they can. Ta Da.

Len Camerbert (Cambert) is alive and well and living in New York. His number is : 861-1932.

Now, about the check I received today.

Michael, believe me I will never feel more secure knowing there is money in the bank. I'm ~~not~~ just not made that way. The only real security is the emotional security of knowing that you are a Person. And knowing that you are loved by another Person who really values you and respects you and appreciates you for being the Person you are. You have given me all that. Believe me, thanks to you, I am secure. And money is just a tool, just a convience - it's not really all that important. I understand how you feel. I really do. But please look at my side as well.

Michael, I Love having you take care of me. I Love knowing that you care enough to be responsible for me, and strange as it sounds, I Love being dependant on you. Women's Lib would turn over in its grave if they heard me, but I mean it. I don't want the nature of our relationship to change.

It's not enough money to make a big difference, but we should use it to get rid of the small pressures, ~~and~~ and for cash on hand - like transcripts or pink sheets or petty cash. Please let me help. Just use it for the time being, if you want - it's ridiculous to tie up cash for no reason when we are so rich in paper, ect.

We have so much together, I and I know in my heart of hearts that we will spend our lives driving each other crazy. I don't need to "save for a rainy day" you will always be more than able to take care of me. My Love, I shutter ~~to~~ to think of all the money you have spent on me this past year. This check is just a drop in the bucket.

Anyway, after several attempts at other banks, I got some poor unsuspecting officer to cash it for me as a split deposit. So, we now have \$800. in cash and \$1,000. as a cash deposit. Please use it. Please let me help. Please.

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2 So what I am going to try to do in the next
3 little while is to try and anticipate the questions that
4 you may have, the loose threads that might be bothering you,
5 and see if I can suggest to you in this closing statement
6 answers that appeal to your reason and to your good common
7 sense.

8 Now, the first thing that I want to do is to
9 clear up some of the smoke screens that have existed in
10 this case; and I warned you in my opening statement to be-
11 ware of smoke screens and other devices which are designed
12 to take your eyes off of the evidence before you and to get
13 you to look at something that is not in evidence; and I re-
14 gret to say that I think we have seen several smoke screens
15 in this case, and let me give you just two examples of
16 that:

B2 17 The first smoke screen is Miss Braunig's argu-
18 ment made by her attorney on cross-examination that the
19 bank frauds can be attributed to errors by the bank.

20 Well, we have heard both on the case in chief
21 and by way of similar acts several bank frauds in this case
22 which range first from the forged checks, forged certified
23 checks on the State Bank of Albany that were forged with
24 the very certification stamp, Government's Exhibit 456A,
25 that was found in Miss Braunig's desk drawer.

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Then, as soon as Braunig and Gardner can withdraw these two checks, withdraw the deposits, some in cash and some transferred to the Michael Gardner account at the Amalgamated Bank, they do so and they use the proceeds to pay off their personal expenses.

Well, you may find that all of this is highly suggestive circumstantial evidence that the people who benefited from these two checks were Susan Braunig and Michael Gardner and that they knew the checks were forged and they were doing their best to conceal that fact..

Incidentally, while we are talking about the bank frauds and the evidence of Miss Braunig's fraudulent intent, don't forget about the vast evidence that was secured from Miss Braunig up in Canada this past March. We didn't have all that much time go through it when it first came into evidence, but you can go through it again in the jury room and you will see there, in the notes, Government's Exhibit 409, the virtual manual, you may find, of check kiting, partly written by Susan Braunig and partly written by Michael Gardner, a list of all the banks in Vancouver, in Toronto, in Montreal, and lines drawn from one bank to the other bank showing how many days it takes for a check to clear here and

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2 how many days it takes for a check to clear there.

3 And not only do we have the documents, Exhibit
4 409 and the other documents that Mr. Horvath presented,
5 we also have Mr. Horvath's testimony. We have Mr.
6 Horvath's opinion that Susan Braunig was conducting the
7 check kiting scheme up in Canada.

8 And we also have evidence of this Canadian
9 scheme among the items which were seized from Miss
10 Braunig's apartment, such as the money orders which she
11 used to pay her back rent, the two checks that were
12 filled out but never negotiated, and other items of that
13 kind.

14 Was there any real cash to back up these
15 checks and money orders? Or were they all just the product
16 of Miss Braunig's well thought out scheme?

17 In addition, what about the phony certification
18 stamp that was found in the desk in Miss Braunig's
19 apartment, Government's Exhibit 456A? It is the same
20 stamp which the evidence shows was used on those two
21 forged State Bank of Albany checks, Government's Exhibits
22 353 and 354.

23 Now, doesn't that tell you something about
24 what Miss Braunig knew, that she knew about the forgery
25 of other checks in the past, prior to the time that Michael

12 jgsr

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2 Gardner forged Government's Exhibits 56A and 56B and her
3 own deposit of these two checks into her account at
4 Barclays Bank?

5 In considering whether or not Susan Braunig
6 had fraudulent intent, think about the whole picture:
7 first the two forged checks on the State Bank of Albany
8 and Miss Braunig's possession of the phony certification
9 stamp which had been used to forge them; then the \$5,000
10 certified check on the S. M. Gardner account which the
11 bank erroneously forgot to post for two months.

12 Then look at the documents and Detective
13 Horvath's testimony concerning the Canadian activities
14 that Miss Braunig was engaged in in March of this year
15 and how Miss Braunig used the proceeds of that scheme
16 for her own use, her own benefit.

17 Also take a look at the telephone notes and
18 memos that have come into evidence: the one, Government's
19 Exhibit 356A, where Miss Braunig talks about her finding
20 out how long it takes for a check to clear, the ones
21 that reveal the phone calls from Mrs. Naim and Mr.
22 Morality that go unanswered, Miss Braunig writing,
23 "I don't know how to handle Barclays."

24 And what about the two checkbooks found in
25 Miss Braunig's apartment, Government's Exhibits 450 and

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Braunig

2 451, the two Metropolitan Trust checkbooks, one from
3 Montreal and one from Toronto, that Mr. Svendsen said
4 contained exactly the same kind of blank checks that
5 were used to prepare 56A and 56B?

2.4

6 Finally, look at the two forged checks them-
7 selves, the ones that Michael Gardner forged that
8 Susan Braunig deposited and almost immediately began
9 drawing on, and look at the story that she gave Mrs.
10 Naim, that she couldn't recall where those checks had
11 been drawn on, what bank, when she tried, just three
12 days after depositing the first one of them, to draw out
13 some of the money.

14 And also look at what she did when Mrs. Naim
15 refused to cash that check. She turned right around and
16 deposited it at another bank.

17 Look at all this conduct by Susan Braunig and
18 ask yourselves, did Susan Braunig know these two checks
19 were foreged? Did she know that she and Gardner were
20 scheming to extract money from the bank before the frauds
21 surrounding these two Canadian checks was discovered?

22 Look at all the evidence and, when you do.
23 we submit that you all have absolutely no doubt at all
24 concerning Miss Braunig's wilful participation in the
25 scheme to defraud Barclays Bank by means of these two

1 6 jgsr

2 told him you were in Canada this weekend and would call
3 him from the airport. Told him Assen's daughter was
4 bringing in specimens of the letters of credit."

5 Then there are a bunch of calls, Scott Grody,
6 Scott Grody. He keeps calling and calling, trying to
7 find out what's going on.

8 Then there are two notations here, June 11th
9 and June 12th, '75, a week before she testified in the
10 Grand Jury:

11 "Amalgamated' closed the S.M. Gardner account.
12 I tried everything I could. But we're probably better off
13 because Barclays knew about it and it was probably
14 being watched. I am going to open an S. M. Gardner
15 account somewhere today and I'll enclose signature cards."

16 Then on the 12th: "At which bank do you think
17 I should open an S. M. Gardner account?"

18 Ladies and gentlemen, if these telephone
19 records and log sheets aren't revealing enough, you need
20 only look at the evidence which was seized from Miss
21 Braunig's apartment to gain further insight into Miss
22 Braunig's frauds.

23 But, before going into that, defendant's
24 lawyer suggests here that the Government invaded Miss
25 Braunig's personal affairs by taking some of the material

1 7 jgsr

2 from that apartment. Agent Myers told you from the witness
3 stand yesterday that he only took those items which weren't
4 on their face personal. Then, of that material that he
5 seized, we only offered a small amount of it into
6 evidence.

4.3 7 Why did we only offer a small amount of it
8 into evidence? Because, as we said to you in our opening,
9 the personal lives of Susan Braunig and Michael Gardner
10 are of no concern here. Their only relevance is to how
11 their personal lives affected the frauds which they
12 conducted.

13 If we wanted to embarrass Miss Braunig or
14 parade her personal life before you, we could have done
15 that. We did not.

16 MR. JACOBS: Objection.

17 THE COURT: Sustained. Disregard that.

18 MR. KAPLAN: Well, in any event, the smoke
19 screen about invasion of privacy is just that, a smoke
20 screen.

21 Of course, in the apartment was found the
22 blank Metropolitan Trust books of Montreal and Toronto
23 and the phony certification stamp and the blank check
24 of the State Bank of Albany and the money orders and
25 receipts and some of the checkbooks, some airplane

1 8 jgsr

2 tickets, all relating to that Canadian business last
3 March.

4 And we also have checkbooks for a number of
5 Susan and Michael or S. M. Gardner bank accounts, and
6 of course we have Miss Braunig's annotated version of the
7 Government's bill of particulars, Government's Exhibit
8 499 in evidence, where she writes: "There was no
9 perjurious intent except possibly re: tel and mail
10 (name change). That was evasion, not perjury."

11 Well, that's a question for you ladies and
12 gentlemen to decide and not for Susan Braunig. But
13 look at how much she herself admits in that note.

14 Most importantly, we have Miss Braunig's notes
15 to Michael Gardner, which clearly ring out a message.
16 She announces that she has become his partner in crime
17 and she enjoys it.

18 What more is there to say? In effect, Miss
19 Braunig has herself clearly and succinctly admitted
20 her guilt, her confederation with Michael Gardner in
21 their joint criminal enterprises.

22 Now, ladies and gentlemen, it is never
23 very easy to convict anyone. But you took an oath to
24 find the facts, to find the truth in this case.

25 The Government asks you to apply your common

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1 S.M. Gardner account at Amalgamated Bank, Susan Braunig
2 isn't ware of what's going on. Susan Braunig is the one
3 who is taking the deposits over to that bank. She knew
4 all about that account. She didn't tell the grand jury
5 about it but she knew all about it - the forged checks,
6 the checkbooks, the exact same checkbooks on which those
7 forged checks are drawn in her apartment. The checkbook
8 for the forged checks are in her apartment along with the
9 stamp, the phony certification stamp.
10

11 Then Mr. Jacobs says: "Well, Susan Braunig
12 wrote 'Susan Braunig' on the back of that check."

13 Well, she did. Other places she wrote "Susan
14 Gardner," "Susan Braunig Gardner," "S.M. Gardner," and
15 this time she used "Susan Braunig."

16 Then he makes this argument: Well, it was
17 in the drawer in the apartment, this phony certification
18 stamp, these Metro Trust checks, sitting in the drawer in
19 the apartment.

20 Ladies and gentlemen, if there is a stack of
21 counterfeit money sitting in the drawer of your apartment
22 and you are living there alone for a year and you didn't
23 know about it, would you just leave it lying around?

24 Then Mr. Jacobs says to you: Well, she is
25 not charged here with this Canadian business. That's right.

ENK:nc
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M-1691

Inventory of items taken by S/A Thomas Myers from Apt. 10A, 530 E. 72nd St., New York, New York with the consent and permission of the tenant, Mrs. Kathleen Flanagan, upon her repossession of the apartment on May 25, 1976.

1. Mastercharge Card #5217-1306-614-842 S.M. Gardner Gd. Thru 3-76 (Manufacturers Hanover)
2. Sm. white note: "Peter stern HA7-6113-H"

Letter unopened from U.S. News & World Report - much writing on envelope.
4. Letter from Penn Central Transp. Co. - (March 1, 1976), photo copy of dishonored check - payment stopped.
5. Envelope: Letter from all state Credit re: Master Charge - MFG Hanover #171306902437.
6. Envelope: July 17, 1975 - 1) BankAmericard Payment Coupon - Acct. #4250-142-180-410 payment due 8/7/75. 2) (Advertising enclosed) 3) BankAmericard Statement 8/7/75. payment date.
7. Xeroxed copy of "Bill of Particulars" in U.S. v. Gardner (pp. 1-5).
8. Yellow legal sheet, black ink :starting "Pat B. told..."
9. Yellow legal sheet, black ink writing: "Cain[?] Bob Thaller"...
10. White 8 1/2 X 11 sheet, black flare writing: "API - We have a Client..." 5 pages stapled.
11. White 8 1/2 X 11 sheet, black & red flare writing.
"(Marshalls)..." (Torn).
12. White 8 1/2 X 11 sheet, blue ink writing:
"[12:30]... (914)... Aug. 27th..."
13. White 8 1/2 X 11, pencil writing: "(Missing things..."
14. White, 8 1/2 X 11, black flare, & ink writing "(Andy call Barb)..."

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15. White 8 1/2x11, black flare writing: "How did he..."
16. White 8 1/2x11, blue ink writing: 1) Tell him..."
17. Black plastic covered "Phone Bood-Home" 3 ring binder.
Items 18 - 24 describe contents within phone book.
18. 4 white 8 1/2x11 sheets, typing: "Quick list of most often called number."
19. 2 white 8 1/2x11 plain sheets.
20. 3"x4" page from Calendar Thurs. May 2, 1974.
21. Label from Lancer's Vin Rose.
22. White 8 1/2x11 sheet, black flare writing: "Michael sends his warmest..."
23. 199 pages of phone numbers (including tab sheets for alphabetical dividers).
24. Envelope, return address "London Securities, Ltd."
Contents: Nos. 26 - 31.
25. Carters ink pad (black ink).
26. Black stamp for certified check from State Bank of Albany.
27. White 8 1/2x5 sheet, black flare writing:
"Banks Banco De Ponce..."
28. State Bank of Albany check book cover (blue).
29. State Bank of Albany check #of acct.: 08-87-145-5 (blank check).
30. Blue 3x4 sheet, black ink printing "Eric Thomas".
31. White legal size xeroxed letter to "Robert Thaller" July 7, 1975 (2 pages).

34. Manilla legal size envelope, blue ink & pencil writing "research it ... affidavits..." contents are described in items: 35 -78.
35. White index card, 3"x5", black flare writing: "Renee Leonard. . ."
36. White 3"x5" pad of paper, blue ink writing on 3 pages "Walter Mulk, 25 cans +2 ..." (p.2) "But til then..." (P.3) "let the..."
37. Envelope from DPL assoc. Ltd., (7/11/75) containing letter from David Lane to Susan Braunig.
38. Air Canada, Northamerican Timetable (34 pp).
39. White 8x10 1/2 tablet sheet, black flare writing. "Michael called affidavit..."
40. American Airline folder containing: (1) ticket to Toronto for Ms. S. Braunig (3/3/76); (2) Boarding pass for seat 10A, flight 245; (3) Boarding pass from Air Canada, flight 444YZ, seat 8D.
41. Eastern Airlines ticket folder containing: (1) Boarding pass, flight 415Y, seat 22A (2) ticket round trip from NYC to Toronto - Montreal - NYC. 3/2/76 for Susan M. Braunig.
42. Money Order carbon copy from Royal Bank of Canada 3/10/76 for 250.00, #1416402
43. Money Order carbon copy from Royal Bank of Canada, 3/10/76 for \$250.00, #1416401.
44. Money Order carbon copy from Toronto-Dominion Bank - 5 each for \$500.00: Date (nos.) = 3/10/76 (0029190); (0029220) (0029221); (0029245); (0029246).
45. Notice of eviction, pink from NYC to S. Michael Gardner & Susan M. Gardner - 3/3/76
46. Money Order carbon copies from Royal Bank of Canada - 10 for \$250 each dated 3/10/76 - nos. 1416403 - 406, 1446495 - 500, and 1 for \$125 dated 3/10/76 no. 1416407.

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47. Coin envelope, manilla from Provincial Bank
48. Envelope from New York Svgs. Bank, containing notice of insufficient funds on acct. no. 10897-1, 2/1/76.
49. Envelope from B'Altman & Co. - (posted 2/23/76) unopened
50. Calling card Ernesto Garcia.
51. Torn yellow sheet, black ink writing: "534-4991 Luzanne"
52. Mailer from Staff Builders to Susan Gardner. (posted 2/26/76)
53. Luggage tags from Air Canada - blank (4 items)
54. American Airline ticket folder containing advertisement.
55. Envelope from P.O. Box 1890, posted 2/27/76 to Ms. Susan M. Gardner, containing letter from Rose M. Young 2/26/76.
56. Collection cable from Manufacturers Hanover to Toronto Dominion Bank, #287758
57. Check drawn on Nat'l Trust Co., #8, acct #6979 for \$3,725.00 (3/4/76).
58. Check drawn on Canada Permanent Trust Co., #36, acct. #13378, for 3,482.00 (3/4/76).
59. Check drawn on Chemical Bank, #C-61, acct #116-607602, for 150.02 (1/7/75)
60. Sales receipt from Arrow Stationers, (3/11), for \$17.98.
- 61.. Check book drawn on Bank of California, acct. # 65-61245-0, 8 blank checks, unnumbered.
62. Calling card - Honey Bee Book Shop.
63. Signature cards for checking acct. at Banco De Ponce (N.Y.) (3 items - same).

256. Typed essay of Michael Gardner, dated 12/18/60 (12 pages).
257. Zeroxed copy of statement from John Dennett 11/11/73.
258. Yellow legal size sheet, blue ink, "Susan I'm sorry, but when you..."
259. Typed essay, of Michael Gardner dated 2/2/60 (16 pages).
260. Typed essay of Michael Gardner dated 1/3/61. (7 pages).
261. White 9x6 sheets, black ink, "Marty- 111 110 E. 59th ..."
263. Calendar order from "Format Sales, Inc."
264. Note "from the desk of the Atrium Co."
265. Yellow legal size sheets (2 pages) from Michael to Susan 9/29/70.
266. White 4x6 sheet, blue ink, printed "You had a choice..."
267. White 4x6 sheet, black ink, written: "I promise to keep..."
268. White 8 1/2 x11 sheet typed: "Michael, My love, its going to be..."
269. Blue 3x6 slip for deposit to First Nat'l City Bank - note to Michael on back.
270. White 8 1/2x11 sheet, typing & writing: "12:06 That is what's happened..."
271. White 6x9 sheet, black flare: "Art Viviani 762-3412..."
272. Yellow legal size sheet, blue ink: "Susan please make ..."

273. White 6x9 sheet, blue ink: "Nibble on ~~me~~..."
274. White legal size sheet, blue ink: "Susan thank you . . ."
275. White 8 1/2 X 11, blue ink,: "Susi Q. Jones"
276. White legal size sheet, blue ink: "What do we do about it? . . ."
277. Tag from flowers "Gregorys'" to M. Gardner
278. Credit card application for "Sheraton Hotels".
279. Small white card with printed address: "67 Curlew Road, Point Manalapan . . ." and envelope.
280. Small white card with printed initials "LBG."
281. Printed invitation to "Edgewater Holiday Gala," 12/18/74 . . ."
282. 4 McDonald's Corp. valentines.
283. Greeting Cards of various sizes with the following series nos.: Hallmark 35KF 591-5; Hallmark 75 AWC 200-4; carol cards orange, n.j. 111; Hallmark 75 KF 701-5; Hallmark 50A 916-9; The Forers 35-F-857; The Forers New York 35238F; 1972 Kersten Bros, Co. . . . M 5034; 3-751 White Christmas Cards; 50 F-541 Copyright Euphoria Card Co.; 1972 Kersten Bros. Co . . . M 5001; 80 All Saints Convent; 50 F 291-5 Hallmark; 75 AWC 200-9 Hallmark; Pudgies by Joli 50 B 5003; 50 F 793-8 Hallmark; 35K F 606-5 Hallmark; 35KF 605-6 Hallmark; 50 KF 691-8 Hallmark; 35KF 691-6 Hallmark.
284. Twelve Envelope accompanying cards: 10 white; 1 red; 1 brown.
285. White 6X9 sheet, pencil printing: "RL 5-8800"

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286. One white 6x9 cardboard sheet, marked "79¢"
287. Various and assorted letters from "Susan Margaret Gardner to Michael, on various and assorted pages marked with the following dates (no. in parenthesis indicates no. of pages if more than one)(if a date is repeated it indicates 2 separate letters on the same day): 1973 - Jan 30(3), 30; March 9, 10, 13(2); 15(2), 17, 18, 21, 23, 24, 26, 26, 27, 30, 31; April 2(3); 4, 5, 6, 17, 22, 24, 25, 29(2); May 2, 11, 12, 13, 15, 20, 22, 23, 24, 26, 27, 28, 29, 31; June 1, 3, 4, 6, 7, 9, 10, 11, 12, 14, 15, 16, 17, 18, 22, 23, 26, 27, 28, 29, 30; July 1, 6, 7, 8, 9, 11, 12, 12, 13, 16, 17, 20, 21, 22, 24, 27, 28, 29, 30; August 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 18, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31; September 1, 2, 3, 4, 5, 6, 7, 11, 12, 13, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30; October 1, 2, 3, 4, 5, 6, 7, 9, 10, 11, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 26, 27, 28, 29, 30, 31; November 1, 2, 3, 4, 5, 7, 8, 9, 10, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 22, 23, 24, 25, 26, 27, 28, 29, 29(2); December 1, 2, 5(2), 6, 7, 8, 9, 10, 11, 12(2), 14, 15, 16, 17, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31.
- 1974 Jan. 1(2), 2(3), 3(2), 4, 5(4), 6(2), 6, 7, 8(3), 9(3), 10, 11(2), 12(3), 13, 14(2), 15(2), 17(2), 18, 19, 20, 21, 22, 23(3), 24(3), 25, 26(5); February 2, 6, 7, 8, 9, 11, 12, 16, 17, 18, 19, 21(2), 22, 23, 24, 25, 26, 27, 28; March 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 13, 14, 15, 17, 18, 20, 21, 24(2), 26, 27, 28, 29; April 1, 2(2), 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24; May 1, 3, 4, 7, 12, 16, 17(2), 22, 24, 25, 26, 27, 28, 29, 31; June 1, 2, 4, 5, 8, 9, 12(2), 13, 15, 17, 19, 22, 23, 27, 29(2), 30; July 2, 6, 9(2), 10, 13, 14(3), 15, 19, 21(2), 29; August 1, 2, 3, 4, 5, 9, 12, 18(3), 23(2); Sept. 1, 8, 9, 17, 19(3), 20, 21, 22(2), 23, 24(3), 26(2), 28(5), 29(2); Oct. 2, 5(2), 6(2),

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10(4), 11(2), 12, 14, 15, 17(2), 18, 19, 23, 24,
25(4), 27(2), 30, 21(3); November 3(2), 4, 5(2),
8(3), 10(2), 11, 15(3), 16, 17, 18, 19(2), 20,
22, 23(4), 26(2), 27(3), 28(5); December 3(2),
6, 7(2), 8, 12(3), 11, 13(2), 13(3), 16(2), 17,
18(2), 26(3) 21(5), 22.

1975 Feb. 24, April 7, 9, 10, 12(2), 14, 17(2),
19, 21(2), 23, 25, 27, 29; May 2, 3(2), 6(2),
10, 11, 14.

76 Cr. 21, UNITED STATES v. GARDNER, et al.

ENDORSEMENT ORDER

Relying on United States v. Maze, 414 U.S. 395 (1974), the defendant Gardner has moved to dismiss counts 5 and 6 of the indictment which charge both Gardner and his co-defendant Braunig with mail fraud in violation of 18 U.S.C. §1341. The Court notes at the outset that this motion is addressed to the charges as set forth in the indictment and not, of course, to the sufficiency of any evidence to be adduced at trial.

Counts 5 and 6 of the indictment charge the defendant Gardner with participation in a scheme to defraud the Barclay's Bank of New York (Barclay's) by depositing in various accounts there fraudulent instruments drawn on the Metropolitan Trust Company in Canada. It is alleged that the defendants relied on the fact that Barclay's would use the mails in clearing and collecting these instruments, that is, in sending them to Canada for collection, and that there would be a delay occasioned by this use of the mails. The indictment charges that the defendants took advantage of this delay to obtain funds from Barclay's based on the fraudulent instruments, before Barclay's learned of the true nature of the instruments.

As set forth in the indictment, the scheme charged was not one in which the fraud was complete or had come to fruition before the alleged mailing of the checks by Barclay's took place. See United States v. Maze, *supra*; Parr v. United States, 363 U.S. 370 (1960); Kann v. United States, 323 U.S. 88 (1944). Nor is the defendant's reliance on the delay that would be occasioned by Barclay's use of the mails alleged to have been solely for the purpose of avoiding or delaying detection so as to enable him to engage in further similar ventures. See United States v. Maze, *supra*.

Rather, the indictment charges that the scheme specifically contemplated both the bank's use of the mails and the resulting delay as factors which would aid in the

76 Cr. 21 (cont.)

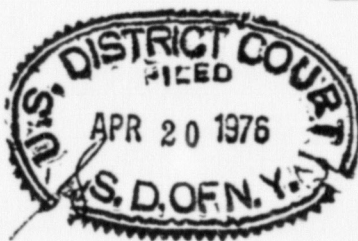
accomplishment of the objects of the scheme. Under the circumstances, the indictment has clearly charged that the use of the mails was "one step toward the receipt of the fruits of the fraud." Kann v. United States, supra at 94. Post-Maze decisions have held precisely such a use of the mails to satisfy the jurisdictional requirements of §1341. See United States v. Ferguson, No. 75-1629 (6th Cir. February 10, 1976); United States v. Shephard, 511 F.2d 119 (5th Cir. 1975). See also United States v. Marando, 504 F.2d 126 (2d Cir.), cert. denied, 419 U.S. 1000 (1974); United States v. Constant, 501 F.2d 1284 (5th Cir. 1974), cert. denied, 420 U.S. 910 (1975); United States v. Miles, 498 F.2d 394 (8th Cir.), cert. denied, 419 U.S. 1021 (1974).

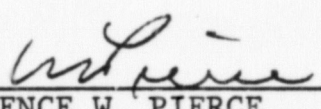
It remains to be seen, of course, whether the Government's proof will establish the charges as set forth in counts 5 and 6 of the indictment. The Court rules at this time only that those counts are sufficient to set out a violation of 18 U.S.C. §1341.

The defendant Gardner's motion to dismiss counts 5 and 6 is hereby denied.

SO ORDERED.

Dated: New York, New York
April 19, 1976





LAWRENCE W. PIERCE
U. S. D. J.

COPY SENT TO
DEC 1 1973
THOMAS B. HAKE JR.
FBI
NEW YORK, N.Y.